Service Employees Union, Local 87, Service Employees International Union, AFL–CIO *and* Trinity Building Maintenance Company *and* West Bay Building Maintenance Company, Inc. *and* JMA Properties, Ltd. *and* Koret of California, Inc. *and* IMA Commercial Properties *and* Northwest Asset Management Company, Inc. *and* Brighton Pacific Asset Management Company. Cases 20–CC–3162, 20–CC–3164, 20–CC–3165, 20–CC–3168, 20–CC–3174, 20–CC–3177, 20–CC–3189, 20–CC–3190, and 20–CC–3196

September 30, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On March 10, 1993, Administrative Law Judge Burton Litvack issued the attached decision. The General Counsel, the Respondent, and Charging Party IMA Commercial Properties each filed exceptions and a supporting brief; the General Counsel and the Charging Parties filed answering briefs; the Charging Parties filed a motion to strike the Respondent's exceptions; and the Respondent filed a response to the motion to strike.

The National Labor Relations Board has considered the decision and the record in light of the exceptions[1] and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] and to adopt the recommended Order[4] as modified.[5]

The judge dismissed the complaint in Case 20–CC–3189. The General Counsel alleged that the Respondent, as part of its ''Justice for Janitors'' campaign, picketed at two buildings and sought strike sanctions against one building in an effort to force the buildings' management company, Charging Party IMA Commercial Properties (IMA), to cease doing business with its nonunion building maintenance contractor, Complete Janitorial Service (Complete). The complaint alleges that the Respondent's actions were intended to induce employees of tenants in the buildings to strike in violation of Section 8(b)(4)(i)(B) and to coerce and restrain the tenants in the buildings in violation of Section 8(b)(4)(ii)(B).

The judge found that the Respondent's actions would be unlawfully secondary in nature if Complete were an entity distinct from IMA. The judge found, however, that Complete's owner, Ali Abdullah, is an employee of IMA rather than an independent contractor, because IMA has a right to control the manner and means by which Ali Abdullah performs his tasks. Accordingly, the judge found IMA was a primary disputant and the Respondent's actions were in lawful pursuit of a primary labor dispute. The General Counsel and IMA filed exceptions to the judge's finding that Abdullah is IMA's employee. We agree with the judge. In particular, we emphasize the following.

As noted by the judge, Complete's contract with IMA is an IMA purchase order form with a three-page addendum. IMA created the addendum without input from Abdullah. The addendum prescribes not only that numerous specific cleaning tasks be performed, but the manner in which those tasks are to be accomplished. Although IMA routinely uses its purchase order form to obtain services from subcontractors, the record does not establish that in other instances IMA dictates in such exhaustive detail the tasks to be performed.

We reject the General Counsel's exception to the judge's finding that IMA assistant property manager, Catherine Carmichael, communicated with Abdullah on ''hundreds'' of occasions to direct him to complete work in a more satisfactory manner. The General Counsel contends the record supports only a showing

[1] We deny the Charging Parties' motion to strike the Respondent's exceptions as being without merit. We find it unnecessary to pass on the General Counsel's motion to strike a portion of the Respondent's brief because we find no merit in the argument the Respondent advances in the paragraph in question.

[2] The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). To the extent that Charging Party IMA Commercial Properties has excepted to some of the judge's credibility findings, we have carefully examined the record and find no basis for reversing the findings.

We correct the inadvertent error in the judge's decision in the last sentence of the 12th paragraph of sec. IV,B,2 where he refers to May 20 and 22 as March 20 and 22.

[3] The General Counsel has excepted to the judge's failure to find certain 8(b)(4)(i)(B) violations as alleged in the complaint. We find it unnecessary to pass on the issue of whether the judge properly dismissed these complaint allegations because the finding of the additional violations sought by the General Counsel would be cumulative and would not affect the Order. In this connection, we note that the Charging Parties affected by these exceptions are specifically named in the Order and the broad order will apply to all other persons.

We also find it unnecessary to pass on the General Counsel's exception to the judge's failure to find an 8(b)(4)(ii)(B) threat. Such a finding would be cumulative and would not affect the Order.

[4] We agree with the judge that a broad order is warranted in this case based on the Respondent's actions over a 15-month period in addition to its actions addressed in previous Board decisions. We note that *Iron Workers Local 378 (N.E. Carlson Construction)*, 302 NLRB 200 (1991), cited by the judge in providing the broad order, was enforced on June 24, 1993, in an unpublished decision by the Ninth Circuit Court of Appeals.

[5] The judge inadvertently omitted from Conclusion of Law 11(b) the date of January 11, 1991, from the list of dates on which picketing at the Koret building violated the Act. We correct that omission.

The General Counsel has excepted to the judge's inadvertent omission of the tenants of ''631 Howard'' from par. 1(b) of the recommended Order. We shall correct the omission.

that Carmichael left Abdullah ''at least 20'' notes concerning unsatisfactory work. In fact, Abdullah testified that he visits Carmichael's office during the day and all or most of the time there is a note in his box directing him about cleaning. He testified that ''I go [to Carmichael's office] to pick up my note . . . I just pick up my note and leave.'' We believe this evidence suggests that Abdullah routinely expects a note when he visits Carmichael's office.

The General Counsel excepts to the judge's finding that Abdullah was unaware of a clause in Complete's contract stating: ''Vacation for employees is included in salary.'' The judge relied on this factor as evidence that Abdullah had no part in creating the contract terms. Whether the clause refers to Abdullah or the people he has do the cleaning, IMA's concern with vacation as a component of salary suggests an employer concerned with the extent of employee benefits rather than a contracting party setting forth a contract price for services to be received.[6]

The General Counsel and IMA except to the judge's failure to find that Complete has oral contracts to perform janitorial services for a chain of five supermarkets which are not owned by IMA. Such a finding, they contend, demonstrates the existence of Complete as an entity separate from IMA.[7]

The only evidence offered by the General Counsel of Complete's supermarket contracts is Abdullah's testimony, which the judge did not mention. The judge discredited other portions of Abdullah's testimony. Assuming arguendo that Complete did have these other contracts, the General Counsel failed to show that this work was not done by Abdullah on his own time and, therefore, equivalent to moonlighting. Accordingly, we find that this testimony, even if credited, does not support a finding of Complete's independence from IMA.

In sum, we find in agreement with the judge—noting particularly the existence and nature of the addendum, the property manager's frequent directing of Abdullah, the contract's use of the term ''salary,'' and the insufficiency of evidence pertaining to Complete's other clients—that the record supports the judge's finding that IMA was directing Abdullah as an employee rather than outlining janitorial services for which it was contracting.[8] Accordingly, we find in agreement with the judge that IMA is a primary party to the labor dispute and we shall dismiss the complaint in Case 20–CC–3189.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Service Employees Union, Local 87, Service Employees International Union, AFL–CIO, San Francisco, California, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(b).

''(b) Picketing or any similar related conduct, threatening to picket, or by any other means threaten, coerce, or restrain Northwest Asset Management Co., the tenants at 49 Stevenson, Gallelli Real Estate, the tenants at 1 Ecker, JMA Properties, Ltd., the tenants at 55 Hawthorne, the tenants at 631 Howard, Koret of California, Inc., 394 Associates, Brighton Pacific Asset Management Co., the tenants at 25 Ecker, or any other person engaged in commerce or in an industry affecting commerce where objects thereof are to force or require Northwest Asset Management Co., Gallelli Real Estate, JMA Properties, Ltd., Koret of California, Inc., 394 Associates, Brighton Pacific Asset Management Co., or any other person to cease doing business with Trinity Building Maintenance, West Bay Building Maintenance, GMG Janitorial Maintenance, or any other person or to force or require any person to pressure or cease doing business with Northwest Asset Management Co., Gallelli Real Estate, JMA Properties, Ltd., Koret of California, Inc., 394 Associates, Brighton Pacific Asset Management Co., or any other person in order to force or require the latter persons or any other persons to cease doing business with Trinity Building Maintenance, West Bay Building Maintenance, GMG Janitorial Maintenance, or any other person.''

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT by picketing or any similar related conduct or in any other manner induce or encourage any individual employed by JMA Properties, Ltd., the tenants at 55 Hawthorne and 631 Howard, Koret of California, Inc., Northwest Asset Management Co., Kvaerner Hydropower, Inc., the tenants of 49 Steven-

[6] Although the salary issue arose from a previous conversation with Abdullah, the record evidence overwhelmingly demonstrates that the Complete contract was generated solely by IMA.

[7] In concluding that Abdullah is an employee of IMA, the judge relied, in part, on a finding that Complete has no contracts other than the one with IMA.

[8] See generally *Allbritton Communications*, 271 NLRB 201 (1984), enfd. 766 F.2d 812 (3d Cir. 1985), in which the Board, using the ''right to control test,'' found that a corporation was not an independent contractor but rather an ''administrative arm'' of the respondent such that the corporation's employees were also the respondent's employees.

son, Brighton Pacific Asset Management Co., the FDIC, the tenants of 25 Ecker, or any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of his or her employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services where objects thereof are to force or require JMA Properties, Ltd., Koret of California, Inc., Northwest Asset Management Co., Brighton Pacific Asset Management Co., or any other person to cease doing business with West Bay Building Maintenance, Trinity Building Maintenance, GMG Janitorial Maintenance, or any other person; or to force or require any person to pressure or to cease doing business with JMA Properties, Ltd., Koret of California, Inc., Northwest Asset Management Co., Brighton Pacific Asset Management Co., or any other person in order to force or require the latter persons or any other persons, in turn, to cease doing business with West Bay Building Maintenance, Trinity Building Maintenance, GMG Janitorial Maintenance, or any other person.

WE WILL NOT by picketing or any similar related conduct, by threatening to picket, or by any other means threaten, coerce, or restrain Northwest Asset Management Co., the tenants at 49 Stevenson, Gallelli Real Estate, the tenants at 1 Ecker, JMA Properties, Ltd., the tenants at 55 Hawthorne, the tenants at 631 Howard, Koret of California, Inc., 394 Associates, Brighton Pacific Asset Management Co., the tenants at 25 Ecker, or any other person engaged in commerce or in an industry affecting commerce where objects thereof are to force or require Northwest Asset Management Co., Gallelli Real Estate, JMA Properties, Ltd., Koret of California, Inc., 394 Associates, Brighton Pacific Asset Management Co., or any other person to cease doing business with Trinity Building Maintenance, West Bay Building Maintenance, GMG Janitorial Maintenance, or any other person or to force or require any person to pressure or cease doing business with Northwest Asset Management Co., Gallelli Real Estate, JMA Properties, Ltd., Koret of California, Inc., 394 Associates, Brighton Pacific Asset Management Co., or any other person in order to force or require the latter persons or any other persons to cease doing business with Trinity Building Maintenance, West Bay Building Maintenance, GMG Janitorial Maintenance, or any other person.

SERVICE EMPLOYEES UNION, LOCAL 87, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL–CIO

Paula Katz, Esq., for the General Counsel.
Stewart Weinberg, Esq. (Van Bourg, Weinberg, Roger & Rosenfeld), of San Francisco, California, for the Respondent.
Scott D. Rechtschaffen and *David P. Byrnes, Esqs. (Littler, Mendelson, Fastiff & Tichy)*, of San Francisco, California, for all Charging Parties except JMA Properties, Ltd.
Gordon J. Fine, Esq. (Corbett & Kane), of Emeryville, California, for Charging Party JMA Properties, Inc.

DECISION

STATEMENT OF THE CASE

BURTON LITVACK, Administrative Law Judge. A trial in the above-captioned consolidated matters was held before me in San Francisco, California, on November 5 through 8, 12 through 14, 19, 20, and 22, and December 2, 3, 11 through 13, 1991, and January 27, 29, and 30, and February 6, 1992. The trial was held pursuant to a complaint in Case 20–CC–3162, which was issued on July 10, 1990, by the Regional Director of Region 20 of the National Labor Relations Board (the Board), and which was based on an unfair labor practice charge filed by Trinity Building Maintenance Company (Trinity), on June 14, 1990; a complaint in Case 20–CC–3164, which was issued on August 1, 1990, by the aforementioned Regional Director and which was based on an unfair labor practice charge filed by West Bay Building Maintenance Company, Inc. (West Bay), on July 10, 1990; a complaint in Case 20–CC–3165, which was issued by the aforementioned Regional Director on August 13, 1990, and which was based on an unfair labor practice charge filed on August 3, 1990, by West Bay; a complaint in Case 20–CC–3168, which was issued by the aforementioned Regional Director on October 4, 1990, and which was based on an unfair labor practice charge filed by JMA Properties, Ltd. (JMA), on September 21, 1990; a complaint in Case 20–CC–3174, which was issued by the aforementioned Regional Director on April 29, 1991, and which was based on an unfair labor practice charge filed by JMA on November 15, 1990; a complaint in Case 20–CC–3177, which was issued by the aforementioned Regional Director on January 15, 1991, and which was based on an unfair labor practice charge filed by Koret of California, Inc. (Koret), on January 3, 1991; a consolidated complaint in Cases 20–CC–3189 and 20–CC–3190, which was issued by the aforementioned Regional Director on July 11, 1991, and which was based on an unfair labor practice charge filed by IMA Commercial Properties (IMA), on May 23, 1991, and an unfair labor practice charge filed on June 19, 1991, by Northwest Asset Management Company, Inc. (NAMCO); and a complaint in Case 20–CC–3196, which was issued by the aforementioned Regional Director on August 23, 1991, and which was based on an unfair labor practice charge filed by Brighton Pacific Asset Management Company (Brighton Pacific), on August 7, 1991.[1] The com-

[1] Prior to the commencement of the hearing in these matters, the Regional Director of Region 20 issued three amendments to the complaint in Case 20–CC–3162 on August 2, 1990, September 5, 1991, and September 17, 1991, respectively; two amendments to the complaint in Case 20–CC–3164 on June 23, 1991, and September 5, 1991, respectively; an amendment to the complaint in Case 20–CC–3165 on July 23, 1991; an amendment to the complaint in Case 20–CC–3168 on July 23, 1991; and an amendment to the complaint in Case 20–CC–3177 on January 16, 1991. Counsel for the General Counsel filed a motion to correct the transcript, which accompanied

Continued

plaints allege that Service Employees Union, Local 87, Service Employees International Union, AFL–CIO (Respondent) has engaged in, and is engaging in, conduct violative of Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act (the Act). Respondent timely filed answers to the several complaints and amendments thereto, denying the commission of the alleged unfair labor practices, and the above-captioned matters were consolidated and scheduled for trial. At the trial, all parties were afforded the opportunity to examine and cross-examine witnesses, to offer into the record any relevant evidence, to argue their legal positions orally, and to file posthearing briefs. All counsel filed such documents, and they have been carefully considered by me. Accordingly, based on the entire record herein,[2] including the posthearing briefs, and my observation of the testimonial demeanor of the several witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION[3]

A. *Cases 20–CC–3164 and 20–CC–3190*

At all times material herein, 49 Stevenson Corporation, a Delaware corporation, has been the owner of a building located at 49 Stevenson Street in San Francisco, California, and has been signatory to a contract with Constructa U.S., Inc. (Constructa), a Delaware corporation, for the management of the building. In turn, since January 1989, Constructa, which annually provides real estate services, valued in excess of $50,000, for customers located outside the State of California, has subcontracted the property management services at the 49 Stevenson Street building to NAMCO, a California corporation. At all times material herein, NAMCO has been engaged in the business of property management, managing buildings such as the above building and the building located at 394 Pacific Avenue in San Francisco, California. During calendar years 1989 and 1990, NAMCO derived gross revenues from the operation of commercial office buildings, each year, in an amount in excess of $100,000, of which amount, each year, in excess of $25,000 was derived from its contract with Constructa.

During the 12-month periods ending July 10 and December 31, 1990, the 49 Stevenson Corporation, in the course and conduct of its business operations described above, derived gross revenues in excess of $100,000 from the rental of the 49 Stevenson Street building, of which amount in excess of $25,000 was derived from Kvaerner Hydro Power, Inc. (Kvaerner). The latter is a California corporation, with an office and place of business in the 49 Stevenson Street building, and is engaged in the business of designing and supplying hydromechanical equipment. During the 12-month period ending July 10 and December 31, 1990, in the course and conduct of its aforementioned business operations, Kvaerner sold and shipped goods and products, valued in excess of $50,000, directly to customers located outside of the State of California.

At all times material herein, 394 Associates has been engaged in business as the owner of a commercial office building located at 394 Pacific Avenue in San Francisco, California, and has contracted with NAMCO for management services for the building. In the course and conduct of its aforementioned business operations, 394 Associates annually derives gross revenues in excess of $100,000 from the rental of office space in the 394 Pacific Avenue building, of which amount in excess of $25,000 is derived from the rental of office facilities to the Wells Fargo Bank real estate division. Respondent stipulated that the Wells Fargo Bank is an enterprise engaged in interstate commerce and admitted that, during the above time period, in connection with its business operations at the 394 Pacific Avenue building, Wells Fargo Bank satisfied one of the Board's direct standards for the assertion of jurisdiction.

B. *Cases 20–CC–3164, 20–CC–3165, 20–CC–3168, 20–CC–3174, and 20–CC–3177*

West Bay, a California corporation, with an office located in San Francisco, California, is engaged in business as a janitorial contractor. During the 12-month period ending February 15, 1990, West Bay provided janitorial services, valued in excess of $50,000, in San Francisco for the Sharper Image Corporation, a retail enterprise located within the State of California. Respondent admitted that, during the above period of time, the Sharper Image Corporation, in the normal course and conduct of its business operations, had gross retail sales in excess of $500,000 and purchased and received goods and products valued in excess of $50,000 directly from suppliers located outside the State of California.

At all times material herein, Koret, a California corporation, with an office and place of business in San Francisco, California, has been engaged in the manufacture and sale of wearing apparel. During the 12-month period preceding the issuance of the complaint in Case 20–CC–3177, in the normal course and conduct of its aforementioned business operations, Koret sold and shipped goods and products, valued in excess of $50,000, directly from its San Francisco, California facility to customers located outside the State of California. Also, during said time period, Koret purchased and received goods and products, valued in excess of $50,000, directly from suppliers located outside the State of California.

C. *Case 20–CC–3189*

At all times material herein, Sakti International has been engaged in business as the owner of the commercial office building located at 260 California Street in San Francisco, California, and has contracted with IMA for management services at the building. During the calendar year ending on

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her posthearing brief, and I shall grant her motion and order that the transcript be corrected.

[2] At the hearing, counsel for the General Counsel sought, on several occasions, to substantively change the allegations of each of the consolidated complaints. Several of such proposed amendments were granted and several were denied by me. I have reconsidered all of the above and shall adhere to my rulings during the trial.

[3] The Board's normal jurisdictional standards are as set forth in *Siemons Mailing Service*, 122 NLRB 81 (1958). Further, the Board will assert jurisdiction over ''all enterprises engaged in the management and operation (whether as owners, lessors, or contract managers) of office buildings, if the gross revenue derived from such buildings amounts to $100,000, of which $25,000 must be derived from organizations whose operations meet any of the Board's jurisdictional standards, exclusive of the indirect outflow and indirect inflow standards. . . .'' *Mistletoe Operating Co.*, 122 NLRB 1534, 1536 (1959); *373–381 South Broadway Associates*, 303 NLRB 973 (1991).

December 31, 1990, in connection with its ownership of the commercial office building located at 260 California Street, Sakti International received gross revenues, valued in excess of $100,000, from the rental of office facilities, of which amount in excess of $25,000 was derived from Citibank. Respondent stipulated that Citibank is an enterprise engaged in interstate commerce and admitted that, during the above time period, in the normal course and conduct of its business operations at the 260 California Street building, Citibank satisfied one of the direct standards for the assertion of jurisdiction by the Board.

At all times material herein, 230 California Street Associates, a limited partnership, has been engaged in business as the owner of a commercial office building at 230 California Street in San Francisco, California, and has contracted with IMA for management services at the building. During the calendar year ending on December 31, 1990, in the normal course and conduct of its ownership of the 230 California Street building, 230 California Street Associates derived in excess of $100,000 from the rental of office facilities, of which amount in excess of $25,000 was received from L'Entecote de Pari Aussi, a restaurant located in the building. During the aforementioned time period, in connection with its business operations at 230 California Street, the restaurant derived gross revenues in excess of $500,000 and purchased and received goods and products, valued in excess of $50,000, directly from suppliers located outside the State of California.

D. *Case 20–CC–3196*

At all times material herein, the commercial office building at 25 Ecker Street in San Francisco, California, has been owned by the Ecker Square Condominium Owners Association and has been managed by Brighton Pacific. The building is divided into 34 condominium units, of which 33 are owned by the Federal Deposit Insurance Corporation (FDIC), an agency of the United States Government. At all times material herein, the FDIC has subdivided the 33 condominiums into offices for its use in San Francisco, California, and the parties stipulated that the FDIC, in the normal course and conduct of its business operations at 25 Ecker Street, annually purchases and receives goods and products, valued in excess of $50,000, directly from suppliers located outside the State of California.

II. LABOR ORGANIZATION

Respondent admits that, at all times material herein, it has been a labor organization within the meaning of Section 2(5) of the Act.

III. ISSUES

Based on the allegations of the nine complaints, which were consolidated for the instant proceeding, it is alleged that, over the course of a 15-month period, Respondent engaged in a campaign against the nonunion janitorial contractors in San Francisco, California, and that, rather than bringing pressure to bear against the janitorial contractors themselves, Respondent focused its attack against the owners, managers, tenants, and their employees of the buildings, in which the nonunion janitorial companies were contracted to perform services. It is further alleged that the several owners, building managers, tenants, and their employees were unoffending neutral parties to the labor disputes between Respondent and the nonunion janitorial contractors; that Respondent's tactics included blatantly coercive conduct, including traditional picketing, loud and raucous demonstrations, blocking ingress and egress from buildings, trespassory invasions of several buildings, and threats of picketing or other secondary conduct; that an object of such activity was to force the building managers and owners to cease doing business with the nonunion contractors; and that, accordingly, Respondent engaged in conduct violative of Section 8(b)(4)(i) and (ii)(B) of the Act. While apparently not disputing that it, indeed, was conducting a campaign against nonunion janitorial contractors, Respondent contends that it enjoys a right, guaranteed by the first amendment to the Constitution, to engage in a peaceful campaign against the nonunion contractors; that the object of the assertedly unlawful conduct herein was merely to protest labor law violations committed by the nonunion janitorial contractors and their subcontractors; that some of the so-called unoffending neutral parties were, in reality, joint employers of the janitors, who are employed in the buildings at which the allegedly unlawful activity occurred; and that, in at least one instance, agents of Respondent were ''set up'' to allegedly violate the Act by a clever attorney. In sum, Respondent denies that it engaged in any unlawful conduct herein.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

1. Introduction

Respondent is a labor organization, which represents individuals employed as janitors in commercial office buildings in San Francisco, California; at all times material herein, Richard Leung has been the president of Respondent, Yehya Hassan has been the secretary/treasurer, Roy Hong has acted in the capacities of organizer and organizing director for the labor organization, and Linda Kahn has been acting on Respondent's behalf as a business agent.[4] The record establishes that, during the approximate 16-month period encompassing the alleged unfair labor practices herein, Respondent engaged in a course of conduct, which may be characterized as its ''Justice for Janitors'' campaign and which seemingly had dual underlying motivations. The first involved labor disputes with various nonunion building maintenance companies and Respondent's business-related efforts aimed at causing building owners or managers to reconsider previously made decisions to terminate contractual relationships with union

[4] The matter of the agency status of Leung, Hassan, Hong, and Kahn is at issue herein. In this regard, Respondent's counsel conceded the agency status of each except if he or she was not acting in his or her official capacity at the time and stipulated that, whenever Leung, Hong, Hassan, or Kahn were present at a demonstration, each acted in his or her official capacity and as an agent of Respondent. Further, while, according to Richard Leung, Linda Kahn ''was paid through an international subsidy through Local 87,'' she is listed on the 1990 LM-2 report, submitted by Respondent to the Department of Labor, as a business agent employed by it. In the foregoing circumstances, I find that, at all times material herein, Richard Leung, Yehya Hassan, Roy Hong, and Linda Kahn, in their official capacities, acted as agents for Respondent.

signatory contractors in order to contract with less expensive nonunion building maintenance companies for the providing of janitorial services. The other motivating factor involved Respondent's altruistic desire to inform the public of alleged violations of various Federal and state labor laws committed by a San Francisco janitorial contractor, who provided workers to at least one Charging Party herein, Trinity. Whether Respondent's campaign[5] constituted constitutionally protected free speech or became patent secondary conduct violative of the Act is the issue herein.

2. Case 20–CC–3162

The initial allegations of unlawful conduct herein occurred in June 1990 at the building, the address of which is 49 Stevenson Street in San Francisco. Located at the intersection of Ecker and Stevenson Streets, the building (49 Stevenson), which is directly across Ecker Street from the building at 1 Ecker Street, is a 15-story commercial highrise office building with retail stores on the street level. A one-story high overhang extends out to large white pillars along the Ecker Street and Stevenson Street sides of the building, and beneath it is an arcade area, which is private property. On the Stevenson Street side of the building, there is a public sidewalk, and the arcade area is approximately 8 feet wide. The front entrance to the 49 Stevenson building is located at the end of the arcade area on the Stevenson Street side and consists of a recessed entryway leading to two glass doors, which are 15 feet from the sidewalk. NAMCO, which manages the building, has its suite of offices on the second floor of the building, overlooking the arcade area. Tenants of 49 Stevenson in June 1990, besides NAMCO, included Data Vision, Constructa U.S., Combs and Greenley, and the Yank Sing Restaurant, which did not open for business until early July. The record reveals that neither NAMCO nor any of the other tenants have employees who perform janitorial work and that Respondent has never requested that NAMCO enter into a collective-bargaining agreement with it.

The record establishes that, since on or about March 1989, NAMCO has contracted with Trinity, a California corporation and wholly owned by Michael Boschetto,[6] for janitorial and window cleaning services at 49 Stevenson.[7] The record further establishes that there has never been any collective-bargaining relationship between Trinity and Respondent and that there has been an ongoing labor dispute between them since, at least, the spring of 1990.[8] Thus, during that time period, Respondent began gathering evidence that, at commercial office buildings and other business locations in San Francisco, an individual named Maurice Diaz, doing business as Maurice Diaz Building Maintenance, was providing workers for janitorial maintenance work; that, in the course and conduct of his business operations, Diaz assertedly was committing violations of Federal and State of California labor laws;[9] and that he provided manpower, pursuant to subcontracting arrangements, to other maintenance contractors, including Trinity. Respondent's efforts culminated in the filing of a lawsuit by Respondent, on behalf of several employees of Diaz, against Diaz, Trinity, and other unnamed building maintenance companies, on July 6, 1990, alleging several California labor code violations.[10]

The record reveals that, until June 11, 1990, at 49 Stevenson, Respondent supplied one day janitor, who worked at the building from 6:30 a.m. until 10:45 a.m. and from 2:15 p.m. until 3 p.m. and whose duties included checking and stocking the restrooms and special assignments, and normally two night janitors, who worked from approximately 5:30 p.m. until midnight and whose duties were to clean the common areas, restrooms, and tenant suites. While maintaining that the day janitor was an employee of Trinity, Boschetto testified that, from the commencement of his contract with NAMCO for 49 Stevenson, he subcontracted the night janitorial work to Rivera Janitorial, a fact he failed to disclose to NAMCO.[11] With regard to supervision of the night janitors, Boschetto stated that such was the responsibility of his ''route supervisor'' and that he never observed the night

[5] Much of the testimony, regarding Respondent's conduct herein, was uncontroverted, and Respondent conceded being responsible for all of the demonstrations, described below, except one at the building located at 49 Stevenson Street on August 6, 1991.

[6] Boschetto testified that he has been in the janitorial contracting business for 14 years and that he holds all management positions in the corporation.

[7] Boschetto originally testified, with regard to the agreement between the parties, that ''it's a month-to-month contract.'' However, during cross-examination, on being confronted with the contract, which had a 1-year term but renewed itself for 3 years after each year unless either party gave 30 days' written notice of its intention to terminate the contract, he conceded that it was not a month-to-month arrangement. Asked to explain his error, Boschetto said ''that's what I believed it was,'' and when then asked if he had read the contract, Trinity's owner averred that ''Well, to tell you the truth, I never read it verbatim . . . word for word'' and that he just assumed the term was month to month.

[8] As will be discussed below, Trinity's status as a nonunion janitorial contractor was well known to Respondent, and such appears to have been an important aspect of its campaign against Trinity at 49 Stevenson.

[9] During its case-in-chief, Respondent offered the testimony of three individuals (Maria Esperanza Vivas, Jack Palacios, and Roger Rodriquez), each of whom had worked for Diaz, with regard to the ages of the personnel who performed janitorial work for him, their hours of work, and Diaz' payment practices. Each also testified that he or she gave a written statement, detailing his or her work experiences with Diaz, to Respondent during June 1990. Noting that the testimony of these witnesses was uncontroverted and not inherently incredible, for purposes herein, the significant fact is that there is no record evidence of any reason for Respondent to have doubted the veracity of such information or to have not relied on it in filing a subsequent lawsuit.

[10] This lawsuit was eventually settled before trial.

[11] Boschetto testified that his subcontracting agreement with Rivera was an oral one and that he immediately chose to subcontract the night work as ''It was just easier for me at that time to do that.'' Eventually, according to Boschetto, he informed NAMCO of the Rivera relationship ''some time in 1990,'' and ''they said, 'Fine. Just let us know about it.''' He added that he discontinued subcontracting the night janitorial work at 49 Stevenson in October 1990 ''just because I felt it to be my obligation.'' Contradicting Boschetto on the latter point, Ruth Wheeler, the building manager for NAMCO at 49 Stevenson from October 1989 through November 1990, testified that, in early June 1990, she was informed by a superior with NAMCO that ''some of Trinity's work at 49 Stevenson was being done by subcontract employees and that, shortly thereafter, she met with Boschetto and warned him that the maintenance contract would be terminated unless he ceased the use of subcontract employees that same day. According to her, Boschetto agreed to do so and said ''within a few days'' that he had complied with her demand.

crew while at work. As to the day janitor, Boschetto stated that he supervised the former's work and would visit 49 Stevenson ''about once or twice a week'' in order to do so. He added that NAMCO was contractually authorized to order the day janitor to perform ''emergency'' tasks but that such authority did not extend to the night janitors.

The record is uncontroverted that picketing occurred at the 49 Stevenson building on several days during the time period June 4 through 22, 1990, and, as will be discussed below, shortly after West Bay began janitorial maintenance work at the 1 Ecker building.[12] Mike Boschetto testified that, on Monday, June 4, he received a telephone call from Ruth Wheeler, the NAMCO property manager at 49 Stevenson, informing him that Respondent was picketing outside the building. Three days later, returning Leung's telephone call, Boschetto had a conversation with Richard Leung. Boschetto testified, ''We exchanged greetings and I told him that I understood he was the president of the Union and I congratulated him. And then, he said he would like to talk to me.'' Boschetto asked about what, and Leung replied that it was about how Boschetto did business. The latter asked, ''How's that,'' and Leung responded, ''Non-union.'' Boschetto replied that he was just trying to compete, and after some back and forth cursing and talking, they agreed to meet and discuss the matter on July 19.[13] Although present during the hearing and testifying as a witness, Leung failed to deny either the occurrence of or the substance of this telephone conversation.

With regard to the picketing itself, two witnesses, Ruth Wheeler and Richard Calhoun, a NAMCO vice president whose office is at 49 Stevenson, testified as to what occurred during the first 2 weeks of June. While unable to recall the specific dates, Wheeler did recall that picketing occurred three times each week. She testified that the ''general pattern'' was that the pickets would arrive at approximately 3:30 p.m. and remain for ''twenty minutes to an hour, usually'' and that she would become aware of their presence ''from the noise they made,'' which was ''extremely loud chanting by a large group'' and ''very loud bullhorns.'' Aware of the presence of the pickets, Wheeler would order the building security guard to lock the front doors and go down to the lobby in order to respond to any violence. In the lobby, according to Wheeler, she observed the same scene on each occasion—''a large group of people,'' chanting loudly, carrying picket signs and banners, and marching back and forth inside the arcade area on the Stevenson Street and Ecker Street sides of the building. Wheeler recalled that the picket signs consisted of placards attached to sticks, that the wording on some sides was ''Justice for Janitors—Local 87'' and on others, ''Unfair Labor Practices—Local 87.'' As to the banners, they were composed of red cloth, cut in the shape of a flag, and bore the legend, ''Justice for Janitors.'' Besides the red flag banners and the picket signs, on some of the days, Wheeler observed demonstrators carrying a large white banner, 8 feet by 3 feet and bearing the logo ''Justice for Janitors,'' and heard them shouting ''NAMCO'' and ''Trinity'' on occasion. Finally, Wheeler observed the pickets distributing leaflets to people, who were entering the building and identified General Counsel's Exhibit 31 as one such leaflet. The document, with ''Local 87'' printed in large letters across the top, is addressed to tenants of 49 Stevenson and 1 Ecker. After stating that, at 1 Ecker, a member of Respondent lost his job as a result of the building manager's decision to award the janitorial maintenance contract to West Bay, a nonunion contractor and that 49 Stevenson has always utilized a nonunion contractor, Trinity, the leaflet continues, ''your building owners and managers are saving money by taking jobs away from union workers. You can help us and help yourselves by contacting your building managers and letting them know how displeased you are about this scam!'' Richard Calhoun corroborated Wheeler on the picketing, stating that such occurred on 6 days during the 2-week period, that the pickets usually numbered between 15 and 20 individuals, that the placards were both printed and hand lettered, and that on the latter signs were the words ''no layoffs, no paycuts, and justice for janitors,'' and that printed on the former signs was the legend ''unfair labor practices—Local 87.''[14]

On June 11, with the picketing at 49 Stevenson continuing, Michael Boschetto met with Ruth Wheeler, and, according to the latter, Boschetto ''instructed me that because of the union status situation at the building . . . he was recommending that we no longer have the day janitor working at 49 Stevenson. And I agreed to that.'' The two also agreed on a new starting time for the night janitors. Accordingly, use of the day janitor was discontinued that morning, and Boschetto instructed his attorney to inform Respondent of that and of the new starting time for the night janitors. Thereafter, the attorney, Scott Rechtschaffen, drafted a letter, which was addressed to Richard Leung and hand-delivered[15] to Respondent on June 12, stating that employees and representatives of Trinity would be present at 49 Stevenson only during the hours 6:30 p.m. to 1 a.m. and not at any other time. He further informed Leung that picketing the prior day had occurred at a time when no employees or representatives of Trinity had been present at 49 Stevenson. With regard to the presence of a day janitor at the building, Boschetto testified that he reinstated the position on July 17 because NAMCO requested that such be done.

With regard to picketing at 49 Stevenson during the time period June 11 through 22, the building security guard, Gerald Slemp,[16] whose workstation was a lobby desk, located ''immediately inside the entrance, testified that he observed people, carrying placards, in front of the building on June 11 through 15 and on June 18 through 20. Specifically as to

[12] Respondent has had a labor dispute with West Bay with regard to the latter's status as a nonunion janitorial contractor since at least 1987. See, for example, *Service Employees Local 87 (West Bay Maintenance)*, 291 NLRB 82 (1988).

[13] According to Boschetto, he called off the meeting after the continuation of picketing at 49 Stevenson.

[14] Calhoun first became aware that Trinity may have been subcontracting some of the janitorial work at 49 Stevenson on reading a leaflet, which had been distributed during one of the days of picketing and which asserted that Boschetto had lied to NAMCO about the use of subcontractors. Calhoun did not believe the leaflet as the contract with Trinity prohibits subcontracting; however, according to him, he did speak to Boschetto, who admitted subcontracting the night janitor work and agreed to cease doing so.

[15] Respondent stipulated that it received this letter on June 12.

[16] Slemp is employed by American Protective Services (APS), with whom NAMCO contracts for security guard services at 49 Stevenson. Slemp was assigned to 49 Stevenson from May 14, 1990, through November 1991.

Monday, June 11, Tuesday, June 12, and Wednesday, June 13, he recalled that, each day, a group of 20 to 30 people gathered in front of 49 Stevenson; that they arrived at approximately 3 p.m. and remained until no later than 5:30 p.m.; that ''they were on the sidewalk. I'd say the length of the building . . . on Stevenson Street. . . . They were marching . . . up and down the sidewalk'' in ''kind of an oval circle''; that, on occasion, the people would march inside the arcade area; that, at least, half of the group were carrying picket signs, some reading ''Justice for Janitors,'' others stating ''decent peaceful contract,'' and all stating ''SEIU Local 87'' on the reverse side; and that, on most of the days, the pickets unfolded and carried a large banner, bearing the message ''Justice for Janitors.'' Slemp further recalled, on one occasion, hearing the pickets chant, in unison with a person with a bullhorn, ''ho-ho-union busters-have-to-go'' and observing leaflets being distributed to people entering the building. Bill Miranda, the general manager for West Bay, which, as stated above, had recently been awarded the janitorial maintenance contract for 1 Ecker, testified that, on June 11, he received a telephone call from the owner of Grafika, a retail store on the ground floor of 1 Ecker, regarding picketing at that building, and, in response, arrived outside 1 Ecker at approximately 4 p.m. According to Miranda, he observed a group of five people, two of whom were carrying sticks with attached printed placards, which read ''No Service Cuts'' and ''No Layoffs'' and ''Local 87,'' standing inside the recessed entryway to 49 Stevenson, and, during the next 40 minutes, several more individuals, four of whom carried identical picket signs as described above, joined the original group. While he continued to observe the group, Miranda saw pickets distributing leaflets[17] and heard such chants as ''non-union companies out.'' Miranda further testified that, in order to observe possible picketing at 1 Ecker,[18] he arrived outside that building on June 14 at approximately 3:30 p.m. and observed three people, standing together underneath the 49 Stevenson arcade near the front entrance, and beside them ''there were some picket signs and a stack of . . . paper—some were in color'' on the ground. Over the next hour, according to Miranda, approximately 30 people joined them, and, eventually, the entire group, with about 20 carrying picket signs, ''started going in a circular motion and ended up going toward Ecker St. The placards read ''no service cuts and no layoffs . . . . Local 87.'' Miranda added that, while marching in front of 49 Stevenson, the pickets were inside the arcade area and that, after moving over to in front of the 1 Ecker building, the pickets marched inside the arcade area in front of that building. Also, according to Miranda, handbilling occurred on this occasion.

Finally, with regard to picketing at 49 Stevenson, Linda Taggart, a property manager for NAMCO, who substituted for Wheeler at 49 Stevenson while the latter was on vacation during the week of June 18 and whose office is in that building, testified that she observed the picketing for the entire 3-week period and that such occurred on Tuesday through Thursday of each week (June 5 through 7; 12 through 14; and 19 through 21). With regard to the first week, according to Taggart, she could hear the pickets prior to observing them as they first gathered in front of the 1 Ecker building where someone was shouting into a bullhorn and people were chanting in response. On each of the days, at approximately 3:30 p.m., the group of people, consisting of, at least, 25 individuals, would then cross the street to 49 Stevenson and congregate in the arcade area ''right in [the] recessed entry area.'' In the entrance area, the people would walk in a circular formation, making ''a lot of noise'' as they did so, and every third or fourth person in the formation carried a placard attached to a stick. The signs, which were in different languages, had various messages printed on them—''unfair labor practices—Local 87:'' ''Justice for Janitors—Local 87''; ''No Layoffs, No Service Cuts''; and Unfair Layoffs—Local 87.'' The pickets remained, each day, until approximately 5:30 p.m. During the second week of the picketing, Taggart testified, the pickets confined themselves to the arcade area in the front of the building but outside of the main entrance. Otherwise, the picketing was conducted identically to the first week, with the same picket signs and during the same daily time period. With regard to the 3-day period, June 19 through 21, the picketing was conducted in the same manner, with individuals carrying the same placards as previously used and marching in a circular formation in the arcade area in front of the building. Taggart pointed to three specific occurrences during this week—the noise level of the pickets intensified; the pickets unfurled and carried a large banner with ''Justice for Janitors'' printed on it; and ''the main thing that sticks in my mind was the incident in the street where Ecker and Stevenson meet. Somebody parked a white truck or van in the middle of the intersection. And there were people stationed at each . . . corner with signs that said, honk if you believe in justice for janitors.'' This caused ''a cacophony, just a noisy mess.'' The foregoing accounts of picketing in front of 49 Stevenson, during the first 3 weeks of June 1990, were uncontroverted, and Respondent conceded responsibility for the acts and conduct described above.

3. Case 20–CC–3164

Located at the corner of Ecker Street and Stevenson Street and across Ecker Street from 49 Stevenson, the 1 Ecker building[19] is a commercial office building, with retail stores on the ground floor. As with 49 Stevenson, a one-story high overhang extends out to large brick columns spaced along Ecker Street, creating an arcade area containing the entrances to the retail stores (The Copy Shop, Grafika, and the Golden Gate University Book Store) and the front entrance to the building. The brick columns represent the dividing line between public and private property. Besides the retail stores, other tenants of 1 Ecker in June and July 1990 were Ellman, Burke, Hoffman, and Johnson, a law firm; the San Francisco Education Fund; the Coro Foundation; and the California Appellant Project.

Gallelli Real Estate, a commercial real estate broker, received a contract from the building owner, No. 1 Ecker Associates, to manage 1 Ecker in May 1990, and, at all times material herein, Lisa Baddeley has been the property manager at 1 Ecker for Gallelli Real Estate. The record estab-

[17] One such leaflet, G.C. Exh. 21, is identical to the one obtained by Wheeler.

[18] Miranda testified that his experience, based on having been picketed by Respondent at eight or nine other buildings in the past, was that picketing usually occurred at that time of day.

[19] The correct address of the building is 45 Jessie Street.

lishes that, in May, Able Building Maintenance, which was signatory to a collective-bargaining agreement with Respondent, was the janitorial services contractor for the building, and the contract for said services was effective through May 31. For reasons unclear in the record, Gallelli Real Estate decided to place the janitorial maintenance contract up for bid, and West Bay was chosen as the new building maintenance contractor for 1 Ecker. An agreement, providing for the commencement of West Bay's services on or about June 1, was entered into by the parties in May. The record reveals that Gallelli Real Estate has no employees who perform janitorial work and that neither the latter nor any tenant at 1 Ecker has a collective-bargaining agreement with Respondent or has been the recipient of a demand for such from Respondent. West Bay, according to its general manager, Bill Miranda, has never had a collective-bargaining agreement with Respondent, nor has the latter ever demanded that West Bay enter into such a document.

The record discloses that, on the effective date of its contract for 1 Ecker, June 1, 1990, as did its predecessor, West Bay provided only night janitors, who worked a 7 p.m. until 3 a.m. shift. According to Baddeley, she wanted only night janitorial work ''so as not to disrupt my tenants during regular business hours.''[20] Each night, the janitors' task is to clean the building, which work includes vacuuming, mopping, polishing, dusting, and emptying garbage. According to Miranda, the janitors use mops, buckets, vacuum cleaners, and trash barrels, and the equipment is stored, each night, in a ''general telephone room'' in the building basement and in equipment rooms on each floor. As to the supplying of janitors for work at 1 Ecker, Miranda testified that West Bay does not utilize any of its own janitorial employees in the buildings at which it is contracted to provide janitorial services in the city of San Francisco; rather, as was done herein, West Bay always subcontracts[21] the work.[22]

[20] Nevertheless, according to Baddeley, day janitorial service was instituted in December 1990.

[21] At 1 Ecker, according to Miranda, the janitorial work was subcontracted to Edgar's Janitorial, owned by Edgar Suraez.

[22] The testimony, regarding subcontracting by West Bay, herein is beset by myriad inconsistencies. Thus, at one point, Miranda averred that all his contracts contain subcontracting clauses. Moments later, he contradicted himself, stating that there was no such clause in the Gallelli contract for 1 Ecker. Continuing, Miranda stated that there was an ''oral'' provision to said contract, permitting West Bay to subcontract without the knowledge or consent of Gallelli. He added that this oral agreement was reached between himself and Baddeley ''before we started the contract I'd say couple weeks into May of '90.'' At this time, they discussed several matters, including access to the building, keys, fire, or other security alarms, the time of trash removal, and subcontracting. Baddeley, according to Miranda, was, thus, aware from the outset that West Bay would subcontract the janitorial work at 1 Ecker. However, during her direct examination, Baddeley stated that, at all times material herein, she believed that West Bay's employees were performing the janitorial work in the building and that not until early in 1991 did she become aware that West Bay had always subcontracted the work. During cross-examination, which occurred after a break in her testimony due to the death of a family member, Baddeley contradicted herself, stating that ''I believe Bill told me'' about subcontracting at the time West Bay entered into its contract with Gallelli and that ''there was no outrage or shock or anything like that.'' Asserting that her direct testimony was in error, Baddeley opined, ''I don't know why I said that.''

With the contract between Gallelli Real Estate and West Bay scheduled to become effective on June 1, Baddeley was in her office that afternoon when a 1 Ecker tenant telephoned her, stating that pickets were in front of the building. Baddeley immediately left her office and arrived at 1 Ecker at approximately 4:30 p.m. and observed a group of 40 or 50 persons massed on Ecker Street between 1 Ecker and 49 Stevenson, with some under the arcades of both buildings. According to Baddeley, the people were ''walking, milling, some were standing'' and most were carrying sticks, attached to which were red pieces of cloth, shaped like flags and bearing the message, ''Justice for Janitors—Local 87.'' She added that one person was shouting through a bullhorn and others were ''handing out pieces of paper.'' Later that day, on arriving at home, Baddeley received a telephone call from an individual, identifying himself as Richard Leung, president of Respondent. According to Baddeley, Leung stated ''that I had recently just fired . . . a janitor at 1 Ecker without notice'' Baddeley responded that she had cancelled the old maintenance contract with proper notice and had nothing to do with firing a janitor. ''And then Mr. Leung said . . . that I had better listen to him now or I would not like the consequences. . . . And he went on to say that West Bay pays below minimum wage and . . . hires children.'' Baddeley responded that West Bay pays higher than minimum wage, that she didn't believe about West Bay hiring children, and that Leung ought to speak to the prior maintenance contractor, Able Building Maintenance. Nothing more was said, and Leung, who did testify during the trial, denied neither the occurrence of nor the substance of this conversation. ''Alarmed'' over the content of the conversation, Baddeley contacted Attorney Rechtschaffen, who drafted a letter, dated June 4, addressed to Leung, and hand-delivered to Respondent that day.[23] The letter stated that West Bay would be performing janitorial services at 1 Ecker between the hours of 7 p.m. and 3 a.m. and would not be performing work in the building at any other time during the day and that the janitors only would be using an entrance to the building from Jessie Street for entry and exit and no other entrance.

On June 14, a 1 Ecker tenant gave Baddeley a copy of the same Respondent leaflet as received by Bill Miranda and Ruth Wheeler. Also, late in the afternoon that day, as described above, Miranda observed individuals, carrying picket signs reading ''No Service Cuts'' and ''No Layoffs'' and ''Local 87,'' move across the street from 49 Stevenson and station themselves inside the 1 Ecker arcade area. According to Miranda, he watched the picketing at 1 Ecker for only ''one to two minutes'' and then departed as ''that's all I needed to see.''

On July 3, according to Baddeley, she received, by facsimile transmission, a copy of a letter addressed to Gary Gallelli, with an attachment. Said letter, signed by Roy Hong and dated that day, stated that Respondent had been leafleting the 1 Ecker tenants and the public for the past month and was forced to ''escalate'' its activities. Hong added, ''We understand that you have taken bids from re-

[23] Counsel for the General Counsel offered testimony from Attorney Rechtschaffen with regard to the hand delivery of the letter and the proof of service, and Respondent failed to deny receipt of the document.

sponsible union contractors who will treat their janitors fairly. We hope that you will choose one of these firms for your cleaning services,'' and closed with notice of an ''action'' at 1 Ecker on July 9.[24] Subsequent to receipt of Hong's letter, Baddeley had a telephone conversation with Richard Leung with regard to the planned July 9 demonstration. According to Baddeley, Leung said ''that if I did go with a union janitorial contractor, if I signed even though it wouldn't start until August or September . . . he would indeed stop the planned demonstration for . . . . July 9th.'' Baddeley said she wouldn't look at other bids, and Leung replied ''that . . . I'd be very sorry.'' Baddeley asked if that was a threat, but Leung hung up without responding.

On July 9, Baddeley arrived at 1 Ecker at 11:30 a.m. and noticed approximately 12 individuals, some wearing red shirts which identified them as being from Respondent, standing on Ecker Street close to the Stevenson Street intersection, with a few ''rolling garbage cans that . . . many janitorial people use. Baddeley also noticed a box, filled with the same red banners she had seen in the above-described June 1 incident. Fearing trouble from the crowd, Baddeley spoke to the 1 Ecker security guards, instructing them to make sure that the building entrances remained unblocked and that tenants had free ingress and egress. While the demonstration was just starting, Bill Miranda of West Bay arrived, and they stood together watching what occurred. According to Baddeley, one of the demonstrators attempted to tie a large white banner, reading ''Justice for Janitors,'' to pipes on the arcade columns; she requested that it be taken down, and, when her request was ignored, she had to borrow scissors from one of the retail stores in the arcade and ask a companion of the person, who had tied the banner to the pipe, to cut it down. The man complied with her request. Later, Baddeley introduced herself to the person, who had tied the white banner to the banner, and the latter, in turn, introduced himself as Roy Hong. The demonstration, which grew to, at most, 30 people, continued, with two people playing guitars and ''accompanied by a few other people singing in a folk song-like manner, songs regarding janitors, Gallelli, and West Bay.'' Also, ''other people who were carrying the banner, the flags, and wearing red shirts . . . were standing and walking around the Ecker Street area, close to Stevenson and a little bit down Stevenson.'' Baddeley continued, stating that the demonstrators gradually moved from the Stevenson Street intersection to a point, on Ecker Street, even with the entrance to 1 Ecker and that a person began shouting into a bullhorn, with the crowd responding by chanting in reply and people were blowing whistles. The sound level, to Baddeley, was very loud. At approximately 1 p.m., Baddeley observed many of the demonstration participants departing, and she ''felt that [the demonstration] was breaking up.'' Accordingly, she went inside 1 Ecker to speak to various tenants about what had occurred. However, 15 minutes later, the outside noise level began increasing, and Baddeley decided to investigate. Crossing the lobby, she observed several of the red-shirted demonstrators, standing in the arcade area of the building. She opened the entrance door, ''and I was surrounded by about 12 to 15 people. They were all men, including Roy Hong. And they were all yelling and shouting, blowing whistles, talking in a bullhorn. They crowded in.'' Baddeley shouted that they were on private property and demanded that they leave, and, becoming ''flustered,'' she forced her way back inside the building. After calming down, she again went outside into the arcade area, again was surrounded by the group of demonstrators, and again demanded that they get off 1 Ecker's private property or she would call the police. This time, Hong yelled through the bullhorn, which was no more than 3 or 4 inches from her face, that they did not understand English. With the demonstrators ''totally closed in on me,'' Baddeley was able to escape back into the building and called the San Francisco police for assistance.[25] While she was inside the building, most of the group of 15 demonstrators moved back onto Ecker Street, with some going across to the area of the 49 Stevenson arcade and ''a few'' remaining inside the 1 Ecker arcade area. At least 30 minutes after she telephoned for assistance, police officers arrived and dispersed the crowd.

Bill Miranda, who had been notified about the planned July 9 demonstration by Baddeley 3 days earlier, testified that he arrived at 1 Ecker at approximately 11 that morning and that he stationed himself in a garden area across Stevenson Street from the building. According to him, 30 minutes later, individuals, wearing red T-shirts, with ''Justice for Janitors'' printed thereon, began congregating on Ecker Street, close to the Golden Gate University Book Store entrance in the arcade of 1 Ecker. Lisa Baddeley arrived, and they walked over to Roy Hong, whom Miranda recognized in the crowd. ''At that point . . . [the demonstrators] had a banner that they put on the building, and Lisa asked to take the banner down. And they stuck flags inside'' the piping of the building, ''and she asked them to . . . remove the flags.'' Eventually, the demonstrators removed the banner and flags from the building wall and, using garbage cans as anchors, erected the banner on Ecker Street. By this point the demonstrators numbered their maximum total that day, approximately 20, and most were carrying red banners, bearing the words, ''Justice for Janitors.'' Also, a man, whom Miranda identified at the hearing as being Yehya Hassan, began shouting through a bullhorn and making squealing sounds with it, and, inside the arcade area of the building, the demonstrators began ''walking around in a circular motion and they had whistles . . . and they were yelling . . . chants.''[26] While this was occurring, Miranda added, he observed and heard a black woman, wearing one of the red T-shirts, shout to the demonstrators, ''We're gonna come back here until the property management sign the union contract.''[27] While she

[24] The attachment is a notice for the demonstration on July 9, the purpose for which is stated as ''We must defend ourselves against non-union companies taking over our buildings.''

[25] Baddeley testified that, when she went outside to demand that the demonstrators leave the 1 Ecker arcade area, she had no problem opening the front doors but, as the crowd surrounded her, with four to six people in front of the door, ''the door couldn't have been opened.'' While tenants and others were entering and leaving 1 Ecker during the course of the entire demonstration, Baddeley noticed no one blocked from doing so at the time she was surrounded by the crowd.

[26] Miranda also recalled the guitar players and the singing of folk songs.

[27] Miranda testified that he later learned that the woman's first name is Gwen and that he believed she is a business agent for Respondent. I note that Respondent's aforementioned 1990 LM-2 report

spoke but without making any comments, Roy Hong ''[stood] . . . right next to her or relatively close to her.'' Also, at one point, with Yehya Hassan leading them, ''the people that were in the red T-shirts tried to go in the building'' but were stopped by the 1 Ecker security guards. Miranda continued, stating that, on one occasion, Baddeley was forced to walk through a number of the demonstrators in order to enter the building, and she continually said ''excuse me'' as she did so. Approaching the door, demonstrators made it ''very difficult for her to get through'' and inside. On another occasion, as Baddeley spoke to Hong, the people ''just gathered around her'' underneath the arcade. According to Miranda, ''It looked intimidating.'' During cross-examination, he added that, at one point during the demonstration, Roy Hong pointed at him and said ''these are the people that are using child labor'' and that some of the chanting had to do with the use of child labor.[28] The two foregoing accounts of the July 9 demonstration were uncontroverted, and Respondent conceded responsibility for what transpired.

4. Cases 20–CC–3165, 20–CC–3168, and 20–CC–3174

The record establishes that JMA is engaged in business as a manager of commercial office buildings in San Francisco and has a limited partnership interest in each building which it manages. Among the properties managed by JMA are buildings located at 631 Howard Street and 55 Hawthorne Street (631 Howard and 55 Hawthorne, respectively). Although nominally separate with front entrances around the corner from each other, the two buildings actually form a two-building complex, being connected by a ground-level stairwell, and are managed as one entity by JMA. Tenants in 55 Hawthorne include PC Computer Rental, the American Diabetes Society, the Leukemia Society, the Bank of America, and FTI West, Inc., a disaster analyst, and tenants in 631 Howard include JMA, The Copy Station, and the Tan Cafe. The record further establishes that, prior to September 1989, JMA contracted with ISS, which was signatory to a collective-bargaining agreement with Respondent, for janitorial service at both buildings; that, commencing in September 1989 and continuing through August 1991, JMA contracted with West Bay for janitorial services at both buildings; and that neither JMA nor any tenant in either building employs janitorial employees, has ever had a collective-bargaining relationship with Respondent, or has been the subject of a demand for recognition as the bargaining representative for any of its employees from Respondent.

The record also establishes that, during the summer and fall of 1990, there were four entrances to the two buildings—the two front entrances, a construction entrance to 631 Howard, and a rear, delivery entrance to 55 Hawthorne, which is listed as a separate address, 124 Tehama. With regard to the front entrance to 55 Hawthorne, it is comprised of a tiled area, leading to two double glass doors, which swing outward. Entering the building, one observes a Bank of America ATM machine and a 4-foot diameter planter to the left of the doorway and two 3-foot diameter planters to the right of the doors. The entire entrance area is 19 feet deep and 24 feet wide. A lobby area is immediately behind the glass doors. The front doors of 631 Howard are recessed from the public sidewalk, with a ''kind of tiled area,'' 10 feet by 12 feet, in front of the doorway. Six feet from the front entrance was the construction entrance, comprised of temporary wooden doors and leading directly into the ground level.[29]

The record reveals that, as of July 15, 1990, for use at both buildings, West Bay provided one day janitor, whose job duties included ensuring that the entrance areas of both 55 Hawthorne and 631 Howard remained clean throughout the day, cleaning the restrooms, and answering emergency calls, and who worked from 7:30 a.m. until 4:30 p.m., and a crew of five or six janitors, who performed standard janitorial duties from 5 p.m. until midnight. However, rather than being employed by West Bay, the janitors were employed by other contractors,[30] who provided the janitorial services to 631 Howard and 55 Hawthorne pursuant to subcontracts with West Bay.[31] The record establishes that the day janitor position was terminated on July 31, 1990. Asked why, Bill Miranda stated, ''At that time, [Rita Hernandez, the JMA property manager for the two buildings] renegotiated the contract,'' deleting the day janitor position, ''and the new price took effect August 1.'' Rita Hernandez contradicted Miranda on these points, stating that the last day for the day janitor was August 2, and such resulted from Miranda informing her that, effective immediately, the day man would be discontinued in order to forestall picketing activity

lists a Gwen Strain. Of course, whether the individual, who uttered what Miranda heard, is Gwen Strain is a matter of conjecture.

[28] Miranda admitted using Maurice Diaz, on occasion, on a subcontract basis but denied knowing of Respondent's allegations against him for use of child labor.

[29] The record establishes that the construction work was being performed on the ground floor of 631 Howard; that the general contractor for the project was Field Construction; that the construction entrance was for the use of Field Construction and its employees and subcontractors and their employees; that, as of August 1, construction work commenced daily at 6 a.m. and continued, for two shifts, until 4 a.m.

[30] According to Bill Miranda, West Bay utilized three subcontractors for the supplying of janitors for work at 631 Howard and 55 Hawthorne—Clean Systems (August 1989 through October 1989), Maurice Diaz (October 1989 through July 1990), and TDM & G (August 1990 through August 1991).

[31] With regard to JMA's knowledge of West Bay's subcontracting arrangements, Rita Hernandez, who, at all times material herein, was the manager of 631 Howard and 55 Hawthorne for JMA, testified, during direct examination, that she first became aware of West Bay's above practice on August 1, 1990, from Respondent's leaflet allegations that West Bay had illegally terminated employees of subcontractors. Asked if she objected to West Bay's use of subcontractors, Hernandez said, ''No.'' During cross-examination, after reading her pretrial affidavit, Hernandez changed the date on which she first became aware of West Bay's use of subcontractors to August 2. She testified further that, on one occasion prior to August 1, 1990, Miranda introduced her to Maurice Diaz, saying he would be ''supervising'' the janitorial staff at the buildings but making no mention of his subcontracting role; that, subsequently, Miranda confirmed that he had, in fact, been using Diaz as a subcontractor; that she was surprised to learn the facts about Diaz and ''was concerned that in the future I wanted to know who [the] subcontractor was''; and that Diaz remained as West Bay's subcontractor until August 1, 1990, at which time he was replaced by an individual named Pete Garcia. According to Hernandez, ''He was the on-site supervisor contact that I dealt with and he was also the subcontractor for the janitorial crew'' after August 1.

at the two buildings.[32] In any event, the day position was not reinstated thereafter. As to janitorial equipment, Hernandez testified that the janitors use vacuum cleaners, brooms, mops, liquids, brushes, and other, standard janitorial equipment and that such is stored in the buildings' janitorial closets.

There is no dispute that Respondent engaged in picketing at 55 Hawthorne and 631 Howard from Wednesday, August 1, through Friday, August 3, 1990. Rita Hernandez testified that, on August 1, by facsimile transmission, Respondent sent a letter, with attachments, to JMA. Said letter, signed by Roy Hong, states:

> We demand an immediate meeting with you to resolve the disputes at 55 Hawthorne/55 Howard Building in San Francisco. The illegal and unjust firings of the janitors by your contractors, West Bay/Maurice Diaz, clarifies once and for all that your original decision few months ago to replace the union contractor, which resulted in the loss of job for 7 janitors, was a bad one. We hold you, if not legally, then, certainly morally, ultimately responsible for the firings of the janitors few months ago, and the recent firings. Your failure to respond to this letter will force our actions to expand and escalate.

The first attachment, to the letter, was a photocopy of a letter, addressed to the San Francisco Labor Council and signed by Roy Hong, requesting an unfair labor practice strike sanction against the two buildings, based on based on terminations of employees by West Bay and Maurice Diaz after Respondent had filed a petition for a representation election with the Board, and informing the Council of Respondent's intent to engage in picketing at the two buildings.[33] Shortly, after she received copies of Respondent's documents, Leopoldo Abad, who is JMA's concierge at 55 Hawthorne and whose workstation is a desk in the lobby of that building, informed Hernandez that pickets were in front of 55 Hawthorne.

Thereon, Hernandez walked to 55 Hawthorne, arriving shortly after 4 p.m. and observed approximately 40 individuals, with, at least, 10 carrying sticks with cardboard attachments, ''marching in a circle'' both inside the tiled front entrance area and on the public sidewalk. Some people were blowing on whistles, one person was shouting into a bullhorn, and one person opened a front door and blew on his whistle. Wording on some of the cardboard signs read ''West Bay Unfair, Local 87'' and, on others, read ''West Bay on Strike, Local 87.'' Hernandez telephoned the San Francisco police and, after a few minutes, officers arrived and, after speaking to Hernandez, requested that the pickets move off of the tiled area, which they did. Hernandez continued, stating that, at some point during the afternoon, a ''majority'' of the demonstrators moved to in front of the entrance to 631 Howard, with none remaining at 55 Hawthorne, and ''they were standing sort of strewed out in front of the front entrance and the construction entrance'' on the sidewalk. She added that she left her office at 7 p.m. and observed three to five of the demonstrators, with just one picket sign, remaining in front of 631 Howard.[34]

As stated above, the next day, August 2, according to Hernandez, Miranda informed her that a day janitor would no longer be provided for the two buildings in order to prevent the continuation of picketing during workdays. Also, in this regard and on the same day, presumably at the behest of West Bay, its attorney, Rechtschaffen, drafted a letter, addressed to Richard Leung, stating that neither West Bay nor JMA had recently fired any janitors at 631 Howard or 55 Hawthorne, that the services of a subcontractor (Diaz) had been terminated, that, effective immediately, no employees or its subcontractors would be at the buildings during the hours 2:01 a.m. through 6 p.m., that employees of West Bay's subcontractors would only be in the buildings between 6 p.m. and 2 a.m. each day, that employees and subcontractors of West Bay will not be permitted to enter the buildings through either of the main entrances, and that employees and subcontractors of West Bay will only be permitted to enter through the 124 Tehama Street entrance. Said letter was hand-delivered to Respondent's office that day, and Respondent stipulated to its receipt. As set forth in the letter, neutral and primary gate signs were posted by JMA at approximately noontime on August 2.[35] Later that day, utilizing picket signs

[32] According to Hernandez, Miranda informed her of the discontinuance of the day man while informing her that the entire Maurice Diaz janitorial crew had been replaced. ''I believe [Miranda] came down to the building and he said he had changed subcontractors, Maurice Diaz was a subcontractor, and he decided to change because he wasn't satisfied with their performance, and . . . he told the day man to go home'' in order not to ''have a West Bay employee there, so that we wouldn't get picketed during the day.'' Hernandez readily agreed.

[33] It is urged that, by seeking strike sanction to justify its conduct at 631 Howard and 55 Hawthorne and at other locations involved herein, Respondent disclosed the true secondary character of its conduct. Richard Leung conceded that Respondent sought the strike sanction and that such was, in fact, granted. Leung further admitted that Respondent issued leaflets and other documents, publicizing the strike sanction. In one such document, G.C. Exh. 123, Respondent announced a demonstration at the above buildings in order to protest West Bay's asserted firing of janitors and West Bay's and its subcontractor's, Maurice Diaz, asserted violations of child labor and minimum wage laws. Toward the bottom of the document, Respondent asked the questions, ''Is JMA responsible?'' and ''Can JMA still justify using law violating, non-union contractors, such as West Bay?'' There is no dispute that Respondent represented no employees of any employer working at either building at any time material herein, including employees of West Bay or its subcontractors.

[34] During cross-examination, Hernandez recalled that, on August 1, some of the pickets were distributing a leaflet to people who walked past them, and she identified G.C. Exh. 38(e), which is similar to G.C. Exh. 123, as described above in fn. 33, as the document. However, she denied reading the paragraph, which asserts that Maurice Diaz paid less than minimum wage and used underage children as janitors, and did not recall asking Bill Miranda as to the truth of the allegation. Hernandez denied any knowledge of a lawsuit against Diaz.

[35] Although her testimony was somewhat confusing, Rita Hernandez testified that, during her conversation with Miranda on August 2 regarding Maurice Diaz, changing the maintenance crew, and discontinuing the use of a day janitor, the latter also suggested that separate entrances for neutrals and for West Bay and its subcontractors ought to be established. Aware of what a reserved gate system entailed, Hernandez agreed and, later that day, either using language suggested by Miranda or JMA's attorney, she wrote the gate language on 11-by-18 inch sheets of paper and then she posted ''temporary'' neutral entrance signs at the front entrances to 631 Howard and 55 Hawthorne and a ''temporary'' primary entrance sign at the

with the identical messages as the previous day, three to five individuals picketed, on the public sidewalk, directly in front of the front entrances to both buildings.

Notwithstanding the explicit language of the foregoing letter as to the presence of janitors at 631 Howard and 55 Hawthorne, according to Rita Hernandez, arriving at her office the next morning (August 3) at approximately 7 a.m., she observed three to five individuals, standing on the public sidewalk in front of the entrance to 55 Hawthorne with two people carrying picket signs reading ''West Bay—Unfair—Local 87.'' She added that, during the course of the day, the group moved back and forth from that location to in front of the front entrance to 631 Howard. Then, according to Hernandez, at approximately 3:30 p.m., a group of 30 additional people, with, at least, 10 carrying picket signs reading as stated above and ''West Bay—On Strike—Local 87,'' massed in front of 631 Howard. At first, a few were in front of the front entrance with most standing ''in front of the construction'' entrance ''but they were sort of milling around the whole area.'' Eventually, ''they were walking up and down the sidewalk in front of both entrances . . . in a circle. . . .'' She continued, stating that the group of 30 people remained in front of 631 Howard for ''about half an hour, 45 minutes'' and then they ''just dispersed'' without moving to in front of the front entrance to 55 Hawthorne. Finally, with regard to that day, although construction work was scheduled that day, no construction workers reported for work and, consequently, none of the scheduled work was performed. While the record is unclear as to why no construction workers reported that day, Respondent assumed credit for the failure to report. Thus, in its *Action Report*, dated September 1990, Respondent boasted that ''the Labor Council-sanctioned strike stopped construction at the building as the construction workers honored the picket lines.''

The record establishes that, 3 days later, on August 6, JMA retained David Culver, then of the law firm Corbett and Cane, to represent it in any matters involving Respondent and that, shortly thereafter, during a telephone conversation with Culver, Richard Leung accused one of West Bay's janitorial subcontractors at 631 Howard and 55 Hawthorne of having engaged in labor code violations, including paying below minimum wage and no overtime, and of discharging janitors because of their union organizing activities. David Culver testified that, 2 or 3 days later, he met with Leung and Roy Hong, and Respondent's agents elaborated on their allegations, stating that a Mr. Diaz, who was responsible for supervising the work of the janitors, informed them they were fired or laid off. In order to avoid a resumption of the picketing, Culver responded that JMA ''would not countenance'' unlawful conduct and that he would investigate and consider terminating the contract with West Bay if the allegations were accurate. Subsequently, according to Culver, while he had a series of telephone conversations with Leung and Hong, he did not conduct an investigation as to the Diaz allegations inasmuch as Respondent failed to provide specifics in support. Unclear as to whether such occurred at the above meeting, during a telephone conversation, or at a subsequent meeting at the office of the San Francisco Labor Council, according to Culver, Leung or Hong ''told me that [Respondent] was about to file a civil complaint that would spell the allegations out in more detail'' and ''made it clear to me . . . that they wanted JMA to entertain bids from and to select, a union contractor to do the janitorial services at those two buildings.'' With regard to the matter of bids for a new janitorial services contractor, Culver replied that JMA would, indeed, consider union contractor bids and, if a bid was competitive and the contractor would do as a good a job as West Bay, JMA would consider entering into a contract and terminating the contract with West Bay and that Respondent's dispute was with West Bay as it was the entity which had contracted with JMA. Culver also recalled that the subject of picketing first arose during this conversation but was unclear about the context, recalling that he informed Respondent's representatives ''that in the event that there was any unlawful picketing at the buildings . . . we would file a charge with the [NLRB] . . . and seek injunctive relief.''

The record further establishes that Respondent's representatives had assured Culver that there would not be a resumption of the picketing while Culver considered the allegations against West Bay and whether or not to entertain bids for the janitorial services contract at 631 Howard and 55 Hawthorne and that Respondent specifically postponed any action against JMA in those circumstances. Nevertheless, based on General Counsel's Exhibit 60(f), a ''strike notice,'' it seems clear that, at least by August 24, Respondent was planning to resume the picketing at the two buildings. On that day, a Friday, Culver had a telephone conversation with Roy Hong. According to the uncontroverted testimony of Culver, who believed, at the time, despite Respondent's assurances, there was a serious risk that Respondent might resume its picketing at 631 Howard and 55 Hawthorne at any moment, Hong, who appeared to be quite angry, began by inquiring if JMA was going to award the maintenance work at the buildings to union signatory contractor, ISS, which, of course, had been the janitorial services contractor prior to West Bay and had recently submitted a new bid for the work. Culver replied that the bid ''was not competitive'' and that he doubted whether any union contractor could make a bid at a price competitive with West Bay. Hong then ''demanded to know'' whether janitors, who had been laid off

124 Tehama entrance by noon. Hernandez could not recall whether a neutral gate sign was posted at the temporary construction entrance. She then ''faxed'' copies of the gate signs to JMA's sign company, which was instructed to print permanent signs, which were eventually posted in November by the concierge, Abad. During direct examination, Hernandez added that the neutral gate language was '''Neutral. No employees of West Bay and/or subcontractors to use this door.' And the reserve door at 124 Tahama said 'Reserved. To be used by West Bay and/or its subcontractors, employees only.''' During cross-examination, when confronted with her pretrial affidavit versions of the signs (the neutral gate signs were ''Neutral door—No employees of West Bay or its subcontractors to use this door'' and the primary gate sign stated, ''This door reserved for West Bay and its subcontractor's employees only), Hernandez admitted that the affidavit language was correct. Later, however, during redirect examination, Hernandez reversed herself, stating that the language on G.C. Exh. 39 was correct for the primary gate language (''Reserved Entrance—This Entrance Is Reserved For West Bay Employees Or Its Subcontractors Only'') and G.C. Exh. 40 was correct for the neutral gate language (''Neutral Entrance—No Employees Or Subcontractors of West Bay May Enter This Door''). Notwithstanding Hernandez' confusion, Respondent offered no testimony contradicting her, and there is no allegation, in the complaint allegations as to 631 Howard and 55 Hawthorne, stating a reserved gate violation.

in July or August, would be reemployed by West Bay, and Culver responded that he had urged West Bay to do so when openings occurred but that he really had no ''control'' over West Bay's employment practices. Culver then gave Hong some information, which had been requested, by Respondent, regarding Maurice Diaz. At that point, Hong ''told me that the union was going to resume picketing the following work day. . . . on Monday morning'' as ''we had not followed through on the things that we said we were going to do.'' In response, Culver told Hong ''that a reserve gate system would be in effect. That the Hawthorne Street . . . entrance . . . would be reserved for use by West Bay Building Maintenance and all of its employees and everyone that it was doing business with. And that they would not be allowed to use any other entrance . . . .'' Continuing, Culver told Hong ''that there would be no janitorial employees and no representatives of West Bay or any subcontractors doing business with it present at the premises except for the hours of 6:01 p.m. to 2 a.m.'' Angrily, Hong replied that the problem was West Bay's failure to employ the janitors, and ''for JMA to change its contract from West Bay to a union contractor'' and that the earlier reserved gate system had been tainted, with West Bay personnel using the other entrance, and that, therefore, ''they would be picketing at all entrances to the two buildings.'' To this, Culver replied that JMA would set up a different reserve gate system and that Respondent would be required to honor it and at the correct times. Then, according to Culver, he asked ''what it would take to prevent a resumption of the picketing,'' and ''Hong told me that it would take an agreement on JMA's part to go union.'' Culver responded that JMA had no control over West Bay and wouldn't sign with a contractor ''simply because that contractor was union'' and added that, with the reserved gates, any picketing other than at the Hawthorne Street entrance and at the time West Bay was present, would be unlawful. Replying, Hong said that the union would be there at 6 a.m.[36] to resume the picketing.[37] Hong was not called as a witness, by Respondent[38] and, consequently, failed to deny the occurrence of or substance of this conversation.

The record discloses that Respondent had, in fact, planned to resume its picketing at 631 Howard and 55 Hawthorne on Monday, August 27, 1990, but that such was cancelled. Thus, General Counsel's Exhibit 126 is an ''Urgent Notice,'' published by Respondent, stating ''STRIKE SCHEDULED FOR MONDAY, AUGUST 27, 1990'' at ''the building located at 55 Hawthorne/631 Howard Streets against West Bay for violating the Child Labor Law, Minimum Wage Law, and National Labor Relations Act'' and General Counsel's Exhibit 128 is a notice, apparently published on August 27 by Respondent, stating ''STRIKE AVERTED'' and ''The strike, scheduled for today at 55 Hawthorne/631 Howard building, was put off . . . as a result of a commitment by JMA to give responsible contractors a chance to clean the building.'' What evidently occurred, according to Rita Hernandez, is that, on the advice of its attorney, JMA agreed to accept bids for janitorial work at the two buildings and, in order to facilitate matters, received a list of union signatory contractors from Respondent. Subsequently, during September and October, she had several telephone conversations with either Roy Hong or Linda Kahn, regarding the bidding process. Notwithstanding whatever commitment may have been made to Respondent by JMA, Hernandez concededly gave evasive answers to Respondent's agents and never cancelled the West Bay janitorial services contract. Thereafter, she received a letter, dated October 30, from Roy Hong, in which Hong expressed Respondent's concern that ''the mutual agreement'' to hire a ''responsible union contractor'' to clean the two buildings had been ''jeopardized'' by JMA and Respondent's ''hope'' that the matter could be resolved ''peacefully.'' In response, JMA's attorney wrote a letter to Hong, dated November 5 and stating that there had never been any agreement to hire a union contractor and that JMA had decided to continue to award the janitorial maintenance contract at 55 Hawthorne and 631 Howard to West Bay.

With matters in this posture, Leopoldo Abad, the concierge for JMA at 55 Hawthorne and whose station is a lobby desk, testified that, at approximately 3:30 p.m. on Wednesday, November 7, he observed a pickup truck stop at the curb in front of the building and ''about 12 persons, men[39] and women, walked up to the truck and pulled flags and leaflets . . . out from the truck.'' A woman, who the others referred to as ''Linda'' or ''Spike'' and who the witness identified as being the same person as in a photograph of Linda Kahn, held a bullhorn and walked toward the lobby doors, ''shouting the words 'West Bay out, JMA Liars, JMA Unfair,''' and the others, in response, chanted with her while holding their flags up and marching back and forth on the tile entry way area. Abad added that the flags were red with the words, ''Justice for Janitors,'' printed on them. Abad testified further that, as the demonstration continued, the number of people marching increased to approximately 40 people with almost all carrying the red flags, and that the group

[36] Culver was uncertain if Hong said 6 a.m. tomorrow or 6 a.m. on Monday.

[37] The credibility of Culver is, of course, at issue herein, and he was called as a witness, by Respondent, and questioned concerning his contemporaneous notes of his conversation with Hong. In this regard, it is noted that Culver's asserted question, as to what it would take for Respondent not to resume picketing, is not found in his notes; however, according to Culver, Hong's reply is at the top of the second page—''a deadline when you are going to go union . . . .'' Asked what prompted his question, Culver replied that ''Hong had told me that . . . the Union was going to picket at both entrances or all entrances of the building and that the Union would begin picketing in the morning'' and his belief that Hong seemed ''so angry'' he might disclose his ''unlawful motive.'' Culver reiterated that Hong threatened to picket ''at least two times,'' with the first being ''immediately in response to my notification to him that we would be instituting a reserved gate system.'' This, however, contradicted Culver's direct examination, as set forth above, that the threat to picket came before he mentioned the reserved gate system. Further, asked why the alleged first threat is not found in his notes, Culver averred ''you can't write down everything that occurs in a telephone conversation like that.'' Finally, in this regard, Culver did state, in his pretrial affidavit that he was twice threatened with picketing by Hong during their conversation and that the initial threat came after Culver mentioned the reserved gate system, which would be in place at the two buildings.

[38] While counsel for Respondent claimed that Hong was no longer employed by Respondent and was no longer in San Francisco, there is no evidence that he was unavailable to respond to a subpoena or that Respondent even attempted to serve him.

[39] Three of the men wore baseball caps, bearing the name ''Local 87'' on the front.

continued chanting in unison with Kahn and marching in a circular pattern over ''almost the entire'' tiled area. Gradually, according to Abad, the marchers moved closer to the front doors so that ''they were marching back and forth'' no more than 2 feet from the doors. Abad also observed the demonstrators distributing leaflets[40] to people who were entering or leaving the building. Describing the effect of the marching on the latter persons, Abad stated, ''those people . . . had to squeeze their way around the group of 40'' and ''it was very hard to open the doors,'' as they open outward and ''once you push the door you might hit . . . some of the people from the group.''[41] After a while, Abad went outside, approached Kahn, and asked her to confine the marching to the public sidewalk. She ignored Abad, and, as a result, he telephoned the police department for assistance. Shortly thereafter, officers arrived and spoke to Kahn, who complied moving to the sidewalk along with the marchers. Thereon, the group of 40 demonstrators continued their circular marching and chanting on the public sidewalk until the demonstration ended at 5:30 p.m.[42] Respondent admitted responsibility for the November 7 demonstration, and Abad was uncontroverted as to what occurred.

5. Case 20–CC–3177

Koret, which manufactures women's apparel, maintains its main office in a building, which is located on Mission Street, between Second and New Montgomery Streets, in San Francisco. The building, which is completely occupied by Koret employees, is six stories high; the front door, which is 5 feet in width, opens directly on to the public sidewalk along Mission Street; and the back entrance, which opens to Minna Street and has a separate address of 110 Minna, is comprised of two doors—an 11-1/2-foot wide roll-up door, through which supplies are received and materials are shipped and, next to it, a so-called man door, through which people enter and exit the facility—which open into the shipping and receiving department. Inside the building, Koret maintains its corporate offices and various departmental offices including production, engineering, administration, and design. Also, Koret maintains a small production area in the building in which 25 employees, who are represented by International Ladies Garment Workers Union Local 101 (ILGWU), produce Koret's sample product line. These employees enter and exit the building through the front entrance, and they work from 8 a.m. until 3:45 p.m. each day. Koret employs no janitorial employees and has never had a collective-bargaining agreement with Respondent, nor has the latter ever demanded recognition from Koret as the bargaining agent for any of Koret's employees.

The record discloses that, as of December 31, 1990, Koret had contracted with American Building Maintenance (American) for janitorial services at its building for, at least, 12 years and that American was signatory to a collective-bargaining agreement with Respondent. American provided two janitors, both of whom worked for Koret ''for quite a while'' and whose work hours were 6 p.m. until midnight, to clean the Koret facility. Richard Partida, Koret's vice president for personnel and labor relations, testified that Koret's budgetary procedures require different departments to place their service contracts out to bid each year in order to find vendors who will provide the same levels of service at reduced costs; that, accordingly, the building janitorial maintenance contract was placed for bidding in 1990; and that, at the conclusion of the bidding period, ''the recommendation was made by the building services manager to contract with West Bay because of the cost savings.''[43] Thereafter, Partida met with ''Greg or Craig'' Dellanini of West Bay, and they negotiated a janitorial services contract for West Bay to provide janitorial services at the Koret building.[44] The effective date of the contract was to be January 2, 1991. The record further discloses that, between January 2 and 15, 1991, the janitors' working hours were 6 p.m. until 1 or 2 a.m.; that their work consisted of ''general clean up of the building, all six floors''; that the janitors' entrance was the ''man door'' at the rear of the building; that the janitors' equipment included mops, vacuums, and all normal equipment; and that such is stored in the building during the days.

Victor Krasney testified that, on Friday, December 28, 1990, he received a telephone call from a woman, identifying herself as Linda Kahn. She asked if Koret was changing janitorial firms, and Krasney answered affirmatively. Later that day, Krasney telephoned Kahn at Respondent's office, and, according to the former, the conversation immediately turned to West Bay, with Kahn asking if he knew that West Bay was nonunion. Krasney said he was unaware of that fact, and Kahn said she would ''fax'' some materials to Koret regarding West Bay. After being refreshed with his pretrial affidavit, Krasney was also able to recall, with regard to the conversation, that ''there was . . . reference to that she would start picketing on December 31.''[45] Krasney added that he told Richard Partida that Kahn would send some materials to Koret and she said ''she would have to start a picket at our building.'' Later that day, Linda Kahn did send, by facsimile machine, a memorandum, with attachments, to Koret. In her memorandum, Kahn stated that Respondent had a pending

[40] Abad identified G.C. Exh. 47 as the leaflet distributed that afternoon. Pink in color, it stated, in part, ''West Bay is being sued for wage and hour, overtime, and child labor violations. Local 87 is demanding a reputable union contractor clean the buildings. We demand decent wages, and health benefits. Local 87 may have to go on strike again if JMA continues to refuse to resolve this dispute. We'll keep you informed.''

[41] Notwithstanding the proximity of the demonstrators to the door and whatever difficulty they presented to those entering or leaving the building, ''about two dozen'' people entered the building and ''alot'' left the building during the course of the demonstration.

[42] During cross-examination, Abad stated that the janitors normally arrived for work ''around'' 5 p.m., with such being their regular start time. Also, Abad initially testified that the janitors only entered through the 124 Tehama entrance but, on being confronted with his pretrial affidavit, admitted that ''sometimes the West Bay employees enter the building through the front lobby doors.''

[43] Victor Krasney, Koret's building services manager, testified that, after West Bay bid a lower price than American, he ''informed'' American of its ''high '' price and was told that American could reduce its price, ''but we had to do it at the expense of service.'' Eventually, American did offer a reduced bid rate, but, after discussions with other janitorial contractors, Koret determined ''we were paying too much.''

[44] The contract was for a term of 1 year with automatic renewal ''if we don't do anything.''

[45] Linda Kahn was not called as a witness by Respondent, and, therefore, Krasney's testimony was uncontroverted. There is no evidence that Kahn was unavailable to testify at the trial.

lawsuit against West Bay for wage and hour and child labor law violations; that ''as an Organizer with Local 87, I cannot let Union-cleaned buildings go non-union''; that ''we can work together to find a Union contractor who can meet Koret's needs''; and that ''we need to resolve this before the Union workers lose their jobs.''

Richard Partida confirmed that Krasney informed him of his conversation with Kahn and testified that, on January 2, 1991, after speaking to a representative of the ILGWU, he drafted a letter, addressed to Linda Kahn and dated that same day, and had it sent to Respondent by facsimile machine. Partida stated, in the letter, receipt of which was not denied by Respondent,[46] that Koret would not revoke the decision to contract with West Bay; that no representatives of West Bay would be in Koret's building ''during the day''; that West Bay's janitorial services would start at 6 p.m. each day; and that the West Bay employees' entrance would be the rear entrance to the Koret building—110 Minna. Partida further testified that, at approximately 2 o'clock in the afternoon, he followed his letter with a telephone call to Respondent's office and that he spoke to an individual, identifying himself as Richard Leung. According to Partida, whose testimony was not denied by Leung, ''I told him that I was calling because someone from his office [informed] . . . us that we were going to be picketed. And I asked him if he had received my letter . . . .'' Leung said, yes, and Partida said he ''was calling because of the concern of the threat of pickets, but that I was also calling because [the ILGWU representative] had urged me to call him to arrange a meeting.'' Partida continued, saying that Koret had contracted with West Bay and was within its rights to do so and that it was the result of a normal business decision. Accordingly, Partida ''couldn't see any reason why . . . Local 87 should . . . threaten [Koret] with pickets.'' Leung replied that Koret had ''fired'' two janitors, that it had to reverse its decision and ''get them back in the building working,'' and ''that he was prepared to do whatever he had to do in order to make that happen.'' Leung added that, if Koret did not reverse the decision, ''pickets would show up and Koret would have problems with the ILGWU.'' Partida said that Leung had no ''beef'' with Koret, that the janitors were not Koret's employees, and that Koret had no control over them. He added that Leung should speak to American and West Bay and that Koret was neutral. Continuing, Partida asserted that Koret had done nothing illegal and that Leung was ''wrong'' in threatening to send pickets. Leung replied, saying '''we're prepared to do whatever it takes. If you don't reverse your decision, the pickets will show up. . . . We will picket your building.'''[47] At that point in the conversation, according to Partida, someone entered his office and said that a pickup truck had just arrived in front of the building and many people, carrying picket signs stating ''On Strike,'' were ''forming'' outside the building.[48] Partida, who had asked Leung to hold the line while the individual reported on what was occurring outside,[49] returned to Leung and said he saw no need to continue the conversation while Leung engaged in such a ''bad tactic.'' Leung suggested that they meet to discuss the matter, but Partida refused.

In view Leung's threats and the picketing of the previous day, on January 3, Koret established separate entrances for the use of the West Bay janitors and for all other employees and persons. The record establishes that both Partida and Krasney worked on the wording of the signs, used to differentiate the entrances. According to Partida, once the sign language had been drafted, he gave the draft language to his administrative assistant, Stanko, who typed out the language. Thereafter, Krasney reproduced and enlarged the size of the type for posting and posted the designation signs that afternoon. Partida identified General Counsel's Exhibit 61, which reads ''KORET OF CALIFORNIA—DELIVERY AND JANITORIAL ENTRANCE ONLY!!!,'' as ''a sign that we made up to be posted at the back entrance to our building at 110 Minna'' and General Counsel's Exhibit 62, which reads ''THIS ENTRANCE FOR KORET EMPLOYEES AND CUSTOMERS ONLY!!! ALL DELIVERIES AND JANITORS PLEASE USE REAR ENTRANCE AT 110 MINNA STREET,'' as the sign which ''identifies the front entrance, the sign would be posted at the front.'' Partida continued, stating that the ''man'' door and the roll-up door together comprise the rear entrance and that, consequently, the janitorial employees and delivery sign was posted in the 6- to 12-inch space which separates them.[50] As to the front entrance sign, Partida testified that it ''was posted on the glass doors, the glass double doors that are the entrance to our building at 611 Mission Street. Finally, according to Partida, the entrance designation signs remained posted through January 16.

Also, on January 3, evidently concluding that a meeting would be of some value, Partida telephoned Leung, and they scheduled a meeting for 3:30 p.m. at the Koret building. According to the uncontroverted testimony of Partida and Krasney, such a meeting occurred that afternoon. Present in Partida's office were Krasney, Partida, Scott Rechtschaffen,

[46] Edward Stanko, who is the administrative assistant for Partida, testified that he transmitted the letter, G.C. Exh. 57, by facsimile machine and that it was received by a facsimile machine, which, the record reveals, was utilized by Respondent.

[47] Clearly, Respondent had previously decided to commence some sort of conduct against Koret. Thus, as the record reveals, on receipt of Partida's letter on January 2, Respondent sought and was granted strike sanction against Koret by the San Francisco Labor Council. Evidently, such was done prior to Partida's telephone call.

[48] Victor Krasney testified that the pickets arrived in ''late afternoon'' and remained, on the sidewalk and the street in front of the Koret building, until approximately 6 p.m.

[49] G.C. Exh. 58 is a handbill distributed by the pickets, that afternoon, to workers as they departed from the Koret building. On Respondent's letterhead, the document states that West Bay was ''notorious'' for subcontracting to employers who violate child labor, minimum wage, and overtime laws. The leaflet continued, appealing to workers to inform Koret that they support Respondent.

[50] Partida testified that just one rear entrance sign was posted on January 3 but that, subsequently, two such signs were posted at the rear entrance, with one being ''on the man door itself.'' He added that, inasmuch as both rear doors constituted a single entrance, janitors could use either door to enter the building. Contrary to Partida, Krasney recalled that two signs were posted at the rear entrance on January 3—''one was on the man door . . . about eye level. . . . And the other one was immediately to the left of that . . . on the wall.'' Further, in his pretrial affidavit, Krasney recalled that the wording on the front entrance sign was slightly different than that on G.C. Exh. 62; however, he noted that he was asked to recite the wording of the sign from memory, without having the sign before him.

Leung, and Yehya Hassan. According to Partida, he began, saying he felt it was ''improper'' to be threatened with picketing when the ILGWU and its members would not cross, but he was willing to listen to Respondent's concerns and any proposals for remedying the situation. He added that he thought it ''bad form'' to have Leung ''threaten'' picketing during previous day's telephone conversation and then have pickets show up ''anyway.'' Leung replied that he was there to convince Koret that it had ''to reverse'' its decision to use West Bay, and he ''said that if we did not cancel the contract with West Bay immediately, and recontract the services with [American] . . . there would be continued picketing . . . with as many people as it took to get us to change our minds.'' Krasney then spoke, saying he couldn't understand why Respondent would take such action, and Leung said ''that the two people that had worked in our building were now without a job and that Koret had fired them and replaced them with nonunion workers. Partida asserted that he had had no ''control'' over who did the janitorial work; that American had terminated the janitors—not Koret; and that Respondent's quarrel was not with Koret but with American. He then reiterated that threatening Koret was just ''improper.'' Leung said that he could resolve the matter and, if American was unsatisfactory, offered to find another union contractor for Koret. Partida replied that Koret had the right to select its own vendors; that such was done after cost considerations; and that Koret had taken bids and would not take more bids limited to a list of contractors provided by Leung. The latter said ''he could not be responsible for what would occur and that if we didn't change our minds . . . we were going to be the cause of whatever action [Respondent] had to take.'' Partida then reiterated Koret's position, and the meeting ended.[51] Leung failed to deny the occurrence of or the substance of this conversation, and Respondent did not call Hassan as a witness and offered no explanation for failing to do so.

The record establishes that picketing at the Koret building resumed the following day and continued on January 7, 8, 10, 11, and 14, 1991. With regard to Friday, January 4, Partida testified that, in the afternoon, ''somewhere around 3:00 or 4:00'' at a time when no janitors were working, between 20 and 25 people, with half carrying sticks with attached cardboard placards, bearing the message ''On Strike—Local 87, SEIU,'' gathered in front of Koret's building on Mission Street on the sidewalk. After a while, the picketers, who were no more that 6 inches apart, began to move ''in a formation, a circle, an oblong circle, in front of our building and the circle extended beyond our front door to beyond our front window.'' As the pickets marched, one of them, a man, shouted through a bullhorn into the building whenever he walked past the front door, and the other pickets chanted and yelled vociferously. Partida further testified, with regard to ingress to and egress from the building during the picketing this day, that many employees hesitated to attempt to go out the front entrance, with most going out through the rear entrance and just two or three employees leaving through the front and having to force their way through the crowd.[52] Finally, asked if he could recognize any of the pickets on January 4, Partida stated that Yehya Hassan and Linda Kahn, to whom he spoke on a later occasion, were present that day. The picketing continued, in front of the building, until approximately 5 p.m.

Victor Krasney also testified with regard to picketing on January 4, stating that such began in either the ''early afternoon'' or ''late morning, perhaps''[53] and was conducted both at the front entrance on Mission Street and at the rear entrance on Minna Street. Continuing, he testified that, at the front entrance, ''there was something on the order of 30, 35 people'' with a ''little less than half'' carrying picket signs (cardboard placards attached to wooden sticks), reading ''ON STRIKE, SEIU LOCAL 87'' and ''HUELGA, LOCAL 87''; that, at first, the pickets ''kind of milled around . . .''; and that, then, all the pickets bunched close together and began ''marching in a circle, chanting, and kind of yelling. One person had a bullhorn [and] was shouting into the door . . . to the building.'' As to what occurred at the rear entrance, according to Krasney, there were ''just a few picketing,'' no more that four; ''each carried a placard similar to the ones in front—''ON STRIKE, LOCAL 87, SEIU''; and the [pickets] were just kind of milling around at the back door. They were kind of leaning against [a] car,'' and, ''on one of the days . . . they brought out a couple of folding chairs and were sitting there'' with the picket signs. As to whether ingress to or egress from the building was ever inhibited by the picketing, Krasney testified that many employees chose to leave through the rear entrance and that, those who did exit through the front door, were forced to ''dodge'' the pickets, who ''didn't make an effort to let the people out.'' Also on January 4, Krasney observed one person attempt to enter the building through the front entrance and have a ''difficult time'' in doing so. Finally, as did Partida, Krasney testified that no janitors were working at the time of the picketing and that West Bay was never identified on the picket signs as the struck employer.

Picketing resumed on Monday, January 7. According to Partida, about 11:30 in the morning, he observed picketing at the back entrance—''there were about two or three people with picket signs and they were positioning themselves in front of our man door and the roll-up door . . . .'' Unable

[51] Krasney's recollection of what was said was corroborative of Partida on some points but contradictory on others. According to Krasney, ''the conversation was more or less based on the fact that the union was asking us to reconsider our [choice] of janitorial firms. . . . Leung said . . . that we should reconsider having a nonunion company doing our janitorial.'' Partida said that Koret had changed for many reasons, with the ''main factor'' being price. Leung said he could get other people and asked for an opportunity for them to bid at the same price as West Bay. Partida said that Koret had already decided on West Bay and that was the ''best thing'' for it. At that point, testified Krasney, Hassan became ''agitated,'' said they were making no ''headway,'' and mentioned getting the pickets back. Asked which of Respondent's representatives mentioned picketing, Krasney again said it was Hassan and ''I don't believe Mr. Leung did.'' He added that Hassan mentioned picketing ''probably two, possibly three times.''

[52] One day during the picketing—Partida was not certain it was January 4—he ''observed a gentleman dressed in a business suit carrying a briefcase and, not being able to pass through this oblong marching circle of picketers . . . paused momentarily waiting for . . . an opening so that he could approach our doors, and no one did that.''

[53] Krasney testified ''I know that the pickets came, usually from two-thirty, three in the afternoon. One day out of those days they . . . did come early, or late morning . . . I can't recall which day it was.''

to read the entire wording of the signs, Partida was able to see the words, ''On Strike.'' Later, at approximately 3 o'clock in the afternoon, Partida testified, a group of 20 to 25 pickets gathered in front of the Mission Street entrance. Several carried picket signs, reading ''On Strike, Local 87,'' and the entire group engaged in the same conduct as on the previous Friday until they departed, along with the rear pickets, at 5 p.m. Again, according to Partida, no janitors were working at the time of the picketing, and no sign identified West Bay as the struck employer. As did Partida, Krasney testified that picketing occurred at both the front and rear entrances to the building on January 7; that the conduct of the pickets, at both entrances, was identical to what occurred on January 4 except that, on Monday, at the front entrance, the nonplacard holding demonstrators ''had flags . . . just a short stick with red flags,'' bearing the words ''Justice for Janitors.'' He added that, on one day, a female picket, who was sitting in a car at the rear entrance, introduced herself as Linda Kahn and that a picket sign was near the car. Krasney further testified that, on Tuesday, January 8, picketing identical to that described above, occurred at the front and rear entrances to the building.

Although no evidence was adduced with regard to January 9, there is record evidence that picketing again occurred on Thursday, January 10. On that day, according to Richard Partida, he first observed picketing at 1 p.m. at the rear entrance to the Koret building. Two or three individuals, carrying picket signs, bearing the message ''On Strike, Local 87, SEIU,'' were ''standing in front of the roll-up door,'' and the remained at that location ''the rest of the afternoon.'' Then, at approximately 3 p.m., testified Partida, pickets appeared at the front entrance to the building on Mission Street. There were between 20 and 25 persons, most carrying the identical picket signs as borne by the pickets at the rear entrance and as carried at the front entrance on the earlier occasions, and they engaged in the same behavior as on prior days—marching in their tight, circular formation in front of the front entrance. Also, on this day, according to Partida, a bicycle messenger, who was inside the building at the time of the picketing, exited by the front door and was forced to ''shove'' his way through the demonstrators to reach his bicycle. Once again, there were no janitors working while the picketing occurred, and West Bay was not identified as the struck employer on the picket signs.

Picketing, at the Koret building, occurred again on Friday, January 11. As described by Partida, at 10:30 that morning, he noticed two women, ''sitting in metal fold-up chairs . . . in the opening of the roll-up door.'' They were seated, facing the street, and between their legs were picket signs, reading ''On Strike, Local 87, SEIU.'' Partida testified that he walked outside, approached the women, and asked them to leave ''because they were blocking our entrance way.'' Neither replied, and Partida asked their names. One said her name was Linda Kahn and asked, '''Who the fuck are you?'''[54] Also, that day, Partida observed picketing outside the front entrance to the building. Such entailed the same conduct as the preceding days, including carrying picket signs with the same words, ''On Strike, Local 87, SEIU.'' Again, no janitors were inside the building during the picketing, and West Bay was not identified, on the picket signs, as the struck employer. Finally, according to Partida, picketing occurred, at the Koret building, on Monday, January 14. On this occasion, commencing at approximately 3 p.m., it was confined to the front of the building and, in all aspects, was conducted in an identical manner as the previous 5 days. As stated above, Respondent admitted responsibility for all picketing at the Koret facility and no witnesses controverted any portion of the foregoing testimony as to what occurred.

[54] According to Partida, while he did not observe anyone entering or leaving through the rear entrance, during the time of the picketing there, he did receive reports of a UPS delivery person refusing to make a delivery and of the Golden Gate Garbage Service refusing to pick up Koret's trash. He confirmed the latter by the fact that garbage seemed to be piling up in the trash area.

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The record establishes that IMA is a wholly owned subsidiary of IMA Financial Corporation and is a real estate broker, including leasing and managing commercial properties. In its latter function, IMA collects rents, pays bills, and contracts with service vendors. At all times material herein, among other properties, IMA has been the property manager for buildings located at 260 California Street, San Francisco (260 California), which is owned by Sakti International, and at 230 California Street, San Francisco (230 California), owned by 230 California Associates. The record further establishes that IMA's office is located in the former building; that Richard Barsotti is the executive vice president of IMA; and that Catherine Carmichael is an assistant property manager for IMA and responsible for managing 230 California Street and 260 California Street.

The record reveals that 230 California is a six-story commercial office building, with a penthouse; that the front entrance doors are separated from the public sidewalk by a foyer, which is 8 to 10 feet wide; and that the entrance to the foyer is 5 feet wide. Tenants include the restaurant, L'Entecote de Pari Aussi, Story and Green (investment counselors), Gateway To Travel, Pacific Heights Medical Group, and Rado's Deli. The record also reveals that 260 California is a 12-story commercial office building; that the front entrance opens directly onto the public sidewalk along California Street; that the doorway is 10 feet wide and comprised of two glass doors; and that, in front of the doors are two planters, 3-1/4 feet in diameter, which are 9 feet apart, 7 feet from the doors and 3 feet from the curb. The planters are the property of IMA. Inside the front doors is a lobby area in which a security guard is stationed. Tenants of 260 California include IMA, Citibank, CitiCorp Savings, and the *Ladies Home Journal*. As to the location of the buildings on California Street, it appears that they are only 85 feet apart on the same side of the street.

The record establishes that neither IMA nor any of the tenants at either 230 California or 260 California have employees who perform janitorial work; that IMA has never been party to a collective-bargaining agreement with Respondent; and that Respondent has never demanded recognition from IMA as the collective-bargaining representative of any of its employees. Notwithstanding the foregoing, as it is contractually obligated to provide janitorial services for tenants, prior to December 1, 1989, IMA contracted with Golden State Janitorial Services (Golden State), which is party to a collective-bargaining agreement with Respondent, for the performance of janitorial services at 230 California and at 260 California Street; an individual named Ali Abdullah was

employed by Golden State as a janitor at 230 California. Although not entirely clear in the record, it appears that Abdullah obtained a business license to work under the name Complete Janitorial Service (Complete) and submitted a lower bid price, based on nonunion costs, for the janitorial work at 230 California and, consequently, was awarded the janitorial contract for that building by IMA sometime in 1988, 1989, or 1990.[55] Meanwhile, Golden State continued as the janitorial contractor for 260 California through May 16, 1991, providing one daytime janitor, whose hours were 6:30 a.m. through 3 p.m. and whose duties included answering tenant requests and cleaning the front of the building, and two night janitors, whose hours of work were 5:30 p.m. until 1 a.m. and whose job duties included cleaning and dusting all tenant suites, cleaning bathrooms, and vacuuming carpeted areas and the elevators. Although the circumstances are unclear in the record, at some point prior to May 14, Abdullah was awarded the janitorial contract for 260 California,[56] and, on May 14, Richard Barsotti sent a letter to Golden State, terminating its 260 California janitorial effective after the evening shift of May 16.

The effective date of the janitorial maintenance contract, between IMA and Abdullah, was May 17, 1991, and the record evidence is that, while vaguely defined between the parties, Abdullah was scheduled only to provide a night janitorial crew at 260 California, with said crew reporting after 6 p.m. and working until 1 or 2 a.m. Although the contract provided for such, no day janitor was to be provided; according to Catherine Carmichael, Ali Abdullah agreed to perform any necessary day work but after 6 p.m. Questioned as to why the day janitor position would be eliminated, Carmichael opined that ''they didn't want to be hassled by the union.'' Presumably for the same reason, on May 14, Barsotti wrote a letter to Richard Leung, receipt of which letter was admitted by Respondent, stating that, effective May 17, 1991, no janitorial service would be provided during the day at 260 California; that all janitorial functions would be performed between the hours 6 p.m. and approximately 2 a.m.; and that at no other time would janitors be present in the building. The next day, Wednesday, May 15, Barsotti had a telephone conversation with Richard Leung. According to Barsotti, ''Mr. Leung wanted to know if there was anything that could be done to dissuade our decision so that union janitors could continue . . . at 260 California.'' Barsotti explained to Leung that he recently had a series of conversations with Hong about the cost problems involved and that a decision had been made and there was nothing further to discuss. Leung ''persisted,'' asking the price of the new contract and stating that he could improve on the Golden State price with another union contractor. ''And the conversation concluded with Mr. Leung letting me know that this was not the end of it.'' Later that day, Barsotti received several documents, General Counsel's Exhibits 85(a) through 85(f), transmitted by facsimile machine, from Respondent, and, according to a cover letter, the enclosed material consisted of ''copies of leaflets that [Respondent is] planning to pass out at the scheduled events.'' One document, General Counsel's Exhibit 85(e), entitled ''City Wide Alert,'' stated that two IMA-managed buildings, one of which was 260 California, were going nonunion and that IMA had made poor investments and claimed it had no choice but to take jobs away from Respondent's members and announced a rally at noontime the next day, May 16, at 260 California in order to ''protest'' IMA's ''unfair action against the janitors.'' Another document, General Counsel's Exhibit 85(b) appears to be a leaflet, addressed to the tenants of 260 California, informing them that ''IMA . . . wants to go non-union, thinking that they will be able to save money at our expense and beseeching them to write or fax protest letters to IMA.'' A third attached document, General Counsel's Exhibit 85(d), is another leaflet, entitled ''IMA Commercial Properties UNFAIR,'' which states that IMA has acted unfairly by terminating its contract with a union contractor and, thereby, taking jobs away from Respondent's members and announces that ''we are protesting against this heartless action directed at the janitors by IMA.'' The final enclosure, General Counsel's Exhibit 85(f), is a copy of a letter to Walter Johnson of the San Francisco Labor Council from Roy Hong, requesting strike sanction against 260 California.

Consonant with the announcement in the above-described leaflet, a demonstration did, in fact, occur in front of 260 California on Thursday, May 16. According to Catherine Carmichael, at 11:50 that morning, Ronald Zelaya, the security guard, stationed at a desk in the building's lobby, telephoned her and said that ''people were gathering out front of the building.'' She then went downstairs to the lobby and observed, through the glass doors, ''10 to 20 people out in front of the building . . . milling around and making noise.'' She added that some of the people ''were waving red flags,'' on which were printed the words '''Justice for Janitors,''' and ''there was a big banner, which was being held by two demonstrators, who were standing between the two concrete planters, and on which also was printed the message, in English and Spanish, '''Justice for Janitors''' and, beneath that, the words, ''SEIU Local 87.'' Besides the people ''milling around,'' who were standing between the planters and the front doors, and those holding the large banner,[57] other demonstrators ''were sitting on the planters. And they had materials sitting on the planters,'' which were being distributed to people walking past the demonstrators. Also, Carmichael testified, one person was shouting into a bullhorn, and the others repeated what he said in a chanting manner. Observing this scene from inside the 260 California lobby, Carmichael walked outside and requested that the demonstrators remove their flags and flyers from atop the plants in the planters, but ''they did not do it. And so I did it and said that they were killing the plants, and so I would have to

[55] The relationship, if any, between Complete and IMA is a major issue herein and will be explored in detail infra.

[56] The record warrants inferences not only that IMA was aware that potential problems with Respondent could result from awarding the janitorial contract for 260 California to a nonunion contractor but also that IMA sought to avert any such potential problems. Thus, according to Richard Barsotti, prior to reaching a final decision, he had a series of conversations with Roy Hong during which he told Hong that ''the cost of the services that were being done at the building were getting outside of my economic reach, and was there anything we could do about it.''

[57] As the banner was stretched between the two large planters, according to Carmichael, people were unable to walk, between the planters, from the curb to the front doors.

move them which I did, and put them on the ground.''[58] After being downstairs for approximately 5 minutes, Carmichael went back inside the building and up to the IMA office suite; however, 15 to 20 minutes later, she once again went downstairs as ''it was being close to lunch.'' Exiting the building, she observed that, continuing to carry their red flags, ''the [demonstrators] were circling in front of the planters and around in front of the building''[59] and that the marchers, who were no more than an inch or two apart, came within 2 or 3 feet of the front entrance as they circled past. Observing no one being physically impeded from entering or leaving the building, Carmichael stated that, although no one stepped aside, she was able to make her way through the marchers without having to use her elbows to clear a path.[60] She testified further that she returned 20 minutes later, at approximately 12:45 p.m., and observed that the demonstrators ''were circling and making alot of noise . . . basically the same way'' as previously observed. Carmichael was able to identify Roy Hong as the individual, who was shouting into the bullhorn that afternoon. She immediately returned to her office after lunch and received a report from the guard that the demonstrators had departed at approximately 1:30 p.m.

Contradicting Carmichael as to the timing of the above demonstration, Richard Barsotti testified that, ''sometime after 3:00'' on May 16, he was in his office at 260 California and heard noise coming from outside, and, looking down from his window, he observed 15 to 20 people, who had ''gathered . . . in the front area of [the building],'' one person handing out small red banners to the others, a large, white banner being unfurled, and one or two of the group distributing leaflets to people, who were walking past on the sidewalk. According to Barsotti, who stated that he had had no reports of any earlier demonstration that day, after watching for ''several minutes,'' he went downstairs and walked outside the building. He observed most of the people, carrying small, red flags, with the words ''Justice for Janitors'' and ''Local 87'' beneath, and ''milling around and talking.'' At least ''one . . . if not two were handing out leaflets,[61] and the large banner, with ''Justice for Janitors and ''Local 87'' printed in both Spanish and English, was being held ''directly outside of the entrance to the building,'' 7 or 8 feet away and ''in front of the planter box facing the entrance.'' Barsotti walked over to an individual, who he identified as being Roy Hong, and ''Mr. Hong told me . . . to see what I had started, that this was my fault.'' Remaining downstairs just a few minutes, Barsotti returned inside the building, and, once upstairs in his office, he continued to monitor what was occurring outside from his window. From that vantage point, he observed the demonstrators ''marching in a circular fashion, chanting, using a bullhorn.'' The marchers appeared to be no more than 12 to 18 inches apart, which caused individuals, who were trying to leave the building, to have to maneuver to the left or the right of the demonstrators, who, never stepped aside. Barsotti testified further that he observed demonstrators sitting on the flower boxes and that he sent Catherine Carmichael downstairs ''several times'' that afternoon. Concluding with regard to the events of that afternoon, Barsotti stated that the demonstration ended at approximately 6 p.m. and that he received a letter from Roy Hong, in which the latter admitted that Respondent distributed the leaflets, which were enclosed with General Counsel's Exhibit 85(a). Enclosed was a leaflet, which, Hong wrote, would be distributed during the next demonstration at 260 California.[62] Whatever the exact time of the demonstration, given that Hong dated his letter May 16, it can not be in dispute that a demonstration did occur that afternoon.

On Friday, May 17, numerous tenants of 260 California Street reported to IMA that copies of General Counsel's Exhibit 85(b), which was addressed to the building's tenants, had been left in their offices the night before. Also, Catherine Carmichael testified that another demonstration, outside 260 California, occurred that day. She stated that, at approximately 11:50 a.m., after being alerted by the security guard, she went downstairs and observed that there was a group of from 7 to 10 people in front of the building, who were milling around, making alot of noise and ''they were waving flags and . . . passing out flyers.''[63] Carmichael continued, stating that the flags were the same red flags as carried by the demonstrators the day before; the same large banner was again held between the concrete planters, and the people ''were moving around in front of the building . . . in a . . . circle.'' She added that she remained downstairs for only a few minutes, did not return to observe what occurred, and was informed by the security guard that the demonstrators departed at approximately 1 p.m.

Barsotti testified that he next observed demonstrators in front of 260 California on Monday, May 20, and again on Wednesday, May 22. On May 20, according to him, while in his office, commencing ''some time after 3:00'' in the afternoon, he observed a demonstration, similar to that which occurred on May 16, on the sidewalk in front of the building. The demonstration consisted of approximately 15 to 20 people, carrying the small, red banners and marching single file and only a ''couple'' of feet apart, in a circular fashion between the entrance and in front of the large, white banner, which again was positioned approximately 8 feet from and directly in front of the building entrance. While he was unable to hear any chanting, a bullhorn was used ''to urge the people on,'' and, as the entrance area was crowded, people, who were leaving the building, would ''have to exit right or left, squeeze through the circle. Squeeze around the circle.'' Barsotti added that the demonstration concluded at 5 or 5:30 that evening. The next day, Respondent sent a letter, exe-

[58] Carmichael identified G.C. Exh. 70 as one of the leaflets, which she removed from the planter and which was being distributed by the demonstrators that day. Entitled ''IMA COMMERCIAL PROPERTIES UNFAIR, the leaflet, which was printed beneath Respondent's letterhead, mentions that IMA had taken jobs from five janitors by terminating its contract with a union signatory janitorial contractor, and states that, ''We are protesting against this heartless action directed at the janitors by IMA . . . .''

[59] People continued to hold the banner, which was stretched between the planters.

[60] During cross-examination, Carmichael stated that she did have to ''walk around people'' in order to leave for lunch but conceded that when, in her pretrial affidavit, she stated, ''When I exited . . . I did not have any difficulty leaving,'' it was correct.

[61] Barsotti identified G.C. Exh. 85(e) as the document, which he observed being distributed that afternoon.

[62] Said leaflet confirmed that both Carmichael and Barsotti had spoken to the demonstrators that afternoon and mentioned a demonstration at 260 California on May 20 at 11 a.m..

[63] She identified the document as G.C. Exh. 72, and examination discloses it to be a copy of the leaflet, sent to Barsotti, by Hong, the previous afternoon.

cuted by Hong, to Barsotti and enclosed were two documents, which, Hong stated, would be distributed at another demonstration at 260 California on May 22. One document accused IMA of using children, as young as 14 years of age, to clean 230 California and repeated that IMA had recently contracted with a nonunion janitorial contractor, thereby causing the loss of jobs for five janitors, and the other, entitled ''IMA CONDONES CHILD-LABOR EXPLOITATION,'' accused IMA of using a 14-year old child to work as a janitor at 230 California Street and of forcing nonunion contractors to hire children to work. The next day (May 22), Barsotti wrote to Respondent, denying the contents of the above leaflets and threatening a lawsuit if such were not retracted and/or substantiated. Later that day, as he was returning to his office after an appointment, Barsotti noticed another demonstration at 260 California, with between 12 and 20 individuals marching in single file and ''in a circular motion in front of the entrance of the building.'' Roy Hong was present, and, according to Barsotti, it was similar to the prior events, with the people carrying the red banners, a person using a bullhorn, and chanting. Barsotti added that he was forced to squeeze through the marchers in order to enter the building but that he could not recall observing the distribution of any leaflets.

There is no dispute that another demonstration, at 260 California, occurred on Thursday, May 23; however, unlike any other demonstration discussed herein, there is a dispute as to what occurred. Catherine Carmichael testified that she initially became aware of a demonstration that day when the building security guard, Ronald Zelaya, informed her that ''people were gathering.'' Carmichael immediately went downstairs and, remaining for five minutes, observed ''from 15 to 20 people in front of the . . . building. . . . They had whistles and were making a lot of noise. . . . And they were waving the . . . red flags.'' All the demonstrators were standing in the area between the planters and the front door, and, rather than being held, the large, white banner was tied to the trees, which were planted in the planters. As she had her camera with her and intending to take photographs of the scene, Carmichael walked outside and across the street from 260 California. From that location, she observed the demonstrators ''circling'' and ''distributing leaflets, which made some reference to child labor, to people walking by on the street.'' Also, she observed and photographed two of the male demonstrators,[64] standing ''one on one side and one on the other side of the [front] doors'' and each with a hand on the wooden handle of the door by which he was standing. According to Carmichael, they stood that way for ''two to three minutes,'' but she could not recall if anyone attempted to enter or exit the building during that time. Carmichael further testified that, after taking her photographs, she went inside and remained in the lobby for a few minutes. Suddenly, ''all of the people that had been out front stormed . . . into the lobby of the building, pushed both doors—pulled the one door open, pushed the other, and all came into the lobby. . . . They filled the lobby,'' and were blowing on whistles and chanting.[65] Estimating that all of the 15 to 20 demonstrators had entered the lobby, Carmichael raised her hand, ''and asked them not to come in.'' However, according to Carmichael, none of the demonstrators paid attention and, brushing her aside, the demonstrators boarded waiting elevators and proceeded upward. Believing that their destination was the office of a psychologist/counselor named Neil DeMasters, who had an office on the eighth floor,[66] Carmichael waited for an elevator to return to the lobby and went up to the eighth floor. Entering the lobby area on that floor, she discovered that it was ''full of people,'' making noise. Seeing her, most of the demonstrators went inside Suite 801 and peered out at her. Carmichael asked the others to leave, and, although she can't recall what they said, ''in a laughing sort of way the responded.'' Thereon, without waiting to see if they departed, Carmichael left the eighth floor and returned to her office. Remaining in her office for only 5 minutes, Carmichael went back downstairs to the lobby, walked outside, photographed some of the demonstrators as they exited the building, and went back up to her office. Continuing, Carmichael stated that, a short while later, she received a telephone call from the security guard at 230 California, who reported ''that there were people gathering outside of [that building].'' Thereon, Carmichael walked outside of 260 California, looked toward 230 California, and observed 15 to 20 people who ''were walking around in a circle,'' about 2 feet apart and no more than 1 or 2 feet from the foyer entrance, in front of that building. The demonstrators carried the familiar red flags, were blowing whistles, and, following a man shouting into a bullhorn, chanting '''Hey, hey, ho, ho, IMA will have to go/ Hey, ho, ho, child labor's got to go/ IMA unfair.''' After a few minutes, Carmichael returned to her office.

Robert Daniels, Respondent's business agent responsible for enforcing the collective-bargaining agreement with Golden State, testified that he and Roy Hong are the two individuals, who are seen, in General Counsel's Exhibits 73(a) and (b), the photographs taken by Carmichael on May 23,[67] standing beside the front doors of 260 California with their hands on the door handles. According to Daniels and contrary to Carmichael, ''At the moment [the photograph] was taken, myself, as well as Roy Hong, were getting ready to open the doors'' as ''some'' of the demonstrators wanted to visit the office of Neil DeMasters, who was identified, by Daniels, as ''a rehabilitation counselor/coordinator'' utilized by Respondent's members for stress and alcohol related problems. Then, with the doors being held open by Daniels and Hong, ''we went in and we signed the register log . . . at the counter. And we signed it one by one. We signed into the building. . . . then we got into the elevator. We took it up to Neil DeMasters' office, to visit with [him]. . . . We went to [his] office'' but ''discovered . . . he was not there. . . . We turned around. We got in the elevator. We rode back to the lobby. And we exited the building.'' Unsure if anyone had an appointment with DeMasters that day, Daniels testified during cross-examination, that 5 to 12 of the demonstrators entered the building and that ''everyone that

[64] There is no dispute that one was Roy Hong and the other was Robert Daniels, a business agent for Respondent.

[65] Asked by me what she meant by ''stormed,'' Carmichael replied that ''they all came in at one time through the two doors.''

[66] Carmichael testified that, on earlier days of the demonstrations, some of the demonstrators had come inside and told the guard ''that they were going up to see the people on the eighth floor.''

[67] Inasmuch as G.C. Exh. 73(b) appears to be date-stamped 5–23, the inference is warranted that, in fact, the picture was taken on that date.

came into the lobby signed in.'' Moments later, he backtracked slightly, stating that, while he did not personally watch people sign the book, ''I assumed they signed it when they were in front of the security guard.'' Daniels added that the ''people were lined up in single file, to sign in the log book. I was the last one'' and that there was no whistle blowing in the lobby—not while I was there.'' Finally, Daniels denied standing at the front doors any time prior to opening them, and, rather than storming the building, he recalled the demonstrators entering like ''normal human beings.''

Corroborating the testimony of Catherine Carmichael was the security guard, Ronald Zelaya, who stated that his station is a desk in the lobby and that he maintains a visitors' log, in which visitors are supposed to enter certain information, including his or her name, the company or entity represented, the tenant to be visited, and the purpose of the visit. Zelaya testified that, on May 23, he had been instructed by Carmichael to ensure that all visitors signed in ''because during those days the people from the union were coming in''; that, at the time of the incident, Carmichael was standing beside him at his desk: and that none of the demonstrators executed the log book that day.[68] Zelaya added that, on that day, the demonstrators ''rushed'' into the building, refused his request to execute the visitors' log, and said ''we're looking for someone. They were going up. Didn't even know what floor.'' He contrasted the demonstrators' behavior that day with earlier days when demonstrators came inside, signed the logbook, and went up in the elevator.

Finally, with regard to the conduct at 260 California and 230 California, Respondent argues, as a defense to the allegations of unlawful secondary activity, that IMA is, in reality, a primary disputant in any labor dispute between Respondent and Complete; and that, at all times material herein, either Ali Abdulla has been an employee of IMA rather than an independent contractor doing business as Complete or IMA and Complete have acted as a joint employer of the janitors, who clean 260 California and 230 California. At the outset, as stated above, while there is no record evidence as to the surrounding circumstances, Ali Abdulla, who had been employed by Golden State as a janitor at 230 California, resigned from that company, sometime in the time period 1988 through 1990, in order to form Complete and to bid on the janitorial contract for that building. Although the record evidence is not particularly clear, it appears that Complete is a sole proprietorship, owned by Abdulla and his wife; that IMA owns no financial interest in the business; that Abdulla employs ''three guys'' to clean 260 California, that his wife performs janitorial work at 230 California Street, and that he works at both locations. As to whether Complete has an office, Richard Barsotti testified that he knows the address is 401 Hyde Street in San Francisco but nothing else about it; however, counsel for Respondent has requested that I take official notice of the San Francisco Pacific Bell White Pages, which lists the above as Abdulla's home address and 230 California Street as the business address for Complete.

[68] Perusal of G.C. Exh. 132, the logsheets for May 23, 1991, discloses no entries for anyone visiting Neil DeMasters and no entries for purposes other than deliveries or pickups. Moreover, none of the names, mentioned by Daniels, of persons who assertedly signed the book appear therein.

General Counsel's Exhibit 87 is the contract, between IMA and Complete, for 260 California. The body of the agreement is on a purchase order form, provided by IMA, and the language thereon was entirely drafted by IMA, including the fixed cost and a provision mandating that Abdulla maintain accurate cost records for accounting purposes. On this point, Abdulla, who, while testifying, exhibited a halting command, and limited understanding, of the English language, stated that he was neither present during the drafting of nor consulted about the contract language. Particularly instructive as to IMA's control over the terms is the phrase, under the Compensation and Payment provision, ''Vacation for employees is included in salary.'' As to this language, Abdulla explained that underlying it was a dispute, involving his original contract for 230 California, over whether IMA was required to give him vacation pay and that it means, ''I will not make any extra money from the original price.'' He added that, although unaware the provision was in his contract, he was not surprised. Barsotti contradicted Abdulla, testifying, as to the above phrase, that such was included at the express direction of Abdulla and him after a conversation, between the two men prior to the execution of the contract, during which Abdulla was ''wondering whether or not this was an item that was going to paid. . . . I said no, that's not our intention.'' Barsotti testified further that he wanted absolute ''clarity'' concerning employee vacation expense and ''I wanted it to be clear that I was not'' responsible. Finally, with regard to the matter of its 260 California contract, Abdulla admitted he has never had a contract with any management company other than IMA.

The crux of Respondent's employee and/or joint employer arguments concerns a three-page attachment to the above-described purchase order form. The attachment sets forth, in minute detail, what services Abdulla must provide on daily, weekly, monthly, and quarterly bases in each area of the building and, in some instances, specifies exactly how the work is to be done. Thus, on a daily basis, Complete must perform no less than 16 specified tasks while cleaning offices and landings,[69] including dusting with a ''treated cloth'' and removing finger prints and marks from glass and doors with ''a non-abrasive cleaner''; two specified tasks in cleaning the lobby entrance;[70] three tasks in order to properly clean the elevators;[71] and nine specified bathroom cleaning procedures,[72] including using only ''approved germicidal solution'' to clean urinals and toilet bowls, ''disinfectant'' solutions for cleaning toilet seats and floors. Further, Abdulla is required to perform three cleaning jobs on a weekly basis, including washing the exterior walls to a height of 10 feet

[69] These include emptying and wiping ashtrays, emptying waste baskets, vacuuming, dusting, properly arranging furniture, cleaning smudges and graffiti, cleaning sinks, checking windows and doors and leaving night lights on, reporting damage, sweeping stairwells, and damp-mopping wood floors.

[70] They are vacuuming the carpet and dusting exposed areas.

[71] These include vacuuming the floors, damp-wiping the walls, and dusting ceilings.

[72] These include emptying waste containers, polishing mirrors and fixtures, ensuring that ''scale'' is removed from sinks, toilet bowls, and urinals, cleaning urinals and toilets, cleaning fixtures, wiping walls, refilling soap and other dispensers, and wet-mopping the floor.

with a ''high pressure hose'';[73] six on a monthly basis,[74] and four jobs[75] on a quarterly basis. As to the creation of this list of specified tasks, the record is conflicted. Thus, Richard Barsotti asserted that, based on cumulative experience, IMA composed the document—''We provided the scope of services,'' and Complete ''were not involved.'' Contrarily, Ali Abdulla testified that, other than typing it, everything in the list of jobs came ''from me.'' He added, ''I make them when I start to choose to have my own business. I organized this . . . to give them to everyone who is going to give me jobs . . . and I have them in my hand.''[76] However after being unable to define the meaning of certain terms in the list of jobs, including debris, smudge, and nonabrasive cleaner, or to explain the difference between a disinfectant solution and a disinfectant cleaner, Abdulla changed his testimony, stating ''I must give them to somebody and did them for me.'' Later, he once again changed his testimony, saying that he only showed the final document to a friend, who ''read them and do nothing.'' However, when asked why he would include terms he did not understand, Abdulla averred, ''If I don't understand, I'll hire someone who understand, I'll hire someone who understand and read them and do them.''

With regard to direction of Complete's work by IMA, Barsotti testified that he and Carmichael inspect 260 California and 230 California ''periodically,'' denied that either he or Carmichael give nightly instructions to Abdulla with regard to necessary janitorial work, and stated that sometimes there are special instructions for Abdulla, about which they ''take his word'' the work has been completed. In contrast, Abdulla stated that, while he might see Carmichael only ''once a week,'' notes are left for him ''most of the time'' with regard to cleaning matters, including work that has not been completed to her satisfaction. Asked how many notes he has received from Carmichael, Abdulla replied, ''could be hundreds. . . . I don't have no memory to keep all this.'' He added that the notes could range from a request to change a light bulb to pointing out that carpet has not been vacuumed correctly. Further, according to Abdulla, while neither Carmichael nor Barsotti has ever warned him about the consequences of failing to perform an assigned task, he knows he must do the work ''if it needs to be done'' or ''they will terminate my contract within three days.''

With regard to the matter of control over Complete's labor relations practices, Barsotti testified that IMA has no contractual authority to demand the discharge of a janitor and has nothing to do with the hiring or firing of Complete's employees, adjusting their employee grievances, granting time off, vacations, and leaves of absence to Complete's employees. Also, IMA keeps not payroll information for Abdulla. On this point, the latter testified that all of Complete's time, attendance, and payroll records are maintained by an accountant—the same one as utilized by IMA. Further, Abdulla stated that he establishes the wage rates for Complete's employees and that IMA has nothing to do with it; that he is responsible for the hiring and firing of Complete's employees, with IMA having no right to demand that he fire a janitor; and that he alone resolves employee grievances and grants time off.

[73] The others are dusting all window sills and radiators and dusting all wall coverings and decorations.

[74] These include ''high-dust[ing]'' partition ledges, walls, and moldings; mopping stairway; shampooing lobby carpet; dusting lobby chandelier; washing glass windows and front doors, and buffing wood floors.

[75] These include polishing brass standpipes outside the main lobby, polishing door kick plates and push plates and lobby ash urns, waxing and polishing all resilient tile floors, and vacuum and clean furniture.

[76] The inspiration or source for the listing was his prior position with Golden State ''because I used to work for a company that has supervisors and . . . we used to see them before. . . . I used to work for American Building Maintenance, and the way I have to correct the gap for my company as a janitor, we just show them what to do, but my boss always give me this, and he'd say 'This is what you should have your people follow it.' And I read them, I used to.''

7. Case 20–CC–3190

The record establishes that the building, located at 394 Pacific Avenue in San Francisco, is a five-story, 50,000-square foot commercial office building; that it is owned by a limited partnership, the 394 Associates, with Martin I. Zankel, an attorney, acting as the general partner; and that 394 Associates has no employees nor has it ever had any collective-bargaining relationship with Respondent. The record further establishes that, prior to June 15, 1991, the Wells Fargo Bank real estate department was the only tenant of 394 Pacific Avenue; that, pursuant to its so-called triple net lease, Wells Fargo Bank was responsible for all vendor service expenses, including janitorial services, attendant to its leasehold; and that American Building Maintenance (American), which as stated above, is signatory to a collective-bargaining agreement with Respondent, was the janitorial contractor for the building. On or about June 15, 1991, Wells Fargo Bank entered into a new lease agreement, involving only the upper three floors of 394 Pacific Avenue and relieving it of any maintenance responsibility. Also, on or about June 15, 394 Associates contracted with NAMCO to provide property management services for the building, and NAMCO promptly contracted with Trinity for janitorial services there. Two days before the effective date of Trinity's maintenance contract for 394 Pacific Avenue, on June 13, Michael Boschetto mailed a letter to Richard Leung, advising Respondent that Trinity would become the janitorial contractor at said building, that all work would be performed between 7 p.m. and midnight; and that no Trinity employees would be present at 394 Pacific at any other time.

The record reveals that, also shortly before the effective date of Trinity's maintenance contract for 394 Pacific Avenue, Roy Hong sent, by facsimile transmission, a letter, dated June 12, to Joseph Murphy of NAMCO, advising the latter that Respondent was aware that NAMCO was planning to utilize a ''non-union contractor'' for janitorial services at the building and stating that ''once again, [NAMCO] is neglecting to extend a courtesy call to us that may help both of us from being in a position nobody cares to be in.'' The next day, June 13, by facsimile transmission, Hong sent a letter to Martin Zankel in which he wrote that contracting with Trinity ''will result in loss of job for the janitor who has been cleaning the building for years. Subsequently, a non-union janitor will be working at the building.'' Continuing, Hong mentioned that, as in the past, Trinity might use a subcontractor, who has been in violation child labor, overtime, and minimum wage laws and was the subject of a lawsuit in those regards. Then, reaching the point of his letter, Hong

wrote, ''[Respondent] has been campaigning against Trinity throughout downtown, San Francisco for more than a year, and as a result of NAMCO's decision, *your building will be the center of our campaign*.''

As the record discloses, Respondent evidently decided to make its point by, once again, demonstrating at 49 Stevenson.[77] Thus, Navaid Choudhary, a security guard, whose workstation is the lobby at 49 Stevenson, testified that, on Wednesday, June 19 at approximately 12:15 p.m., he was standing by the front entrance, and ''I saw a group of about 15 to 20 people. . . . They were carrying small, red banners. And they were chanting slogans and walking towards building.'' Reaching the building, the marchers ''gathered in front,'' and ''then they start making circles on sidewalk,'' walking around in a 20 foot wide area, stretching from in front of the front doors to the loading dock area, which is located past the front doors on the Stevenson Street side of the building. Choudhary, who, on seeing the demonstrators, informed John Lathrop, the chief engineer for 49 Stevenson, recalled that printed on the red banners was ''Justice for Janitors'' and the name of the labor organization involved; that the chanting was in response to a person, who he recognized from an earlier demonstration, shouting into a bullhorn, out of which, from time to time, came a ''high pitched squeaking sound; that one of the chants was '''Down with NAMCO''; and that one person was attempting to distribute handbills to tenants and pedestrians on the sidewalk.[78] This handbill, entitled ''CONSPIRACY AGAINST JANITORS,'' alleges that there are unscrupulous building owners, including Martin Zankel and his partners at 394 Pacific, who take jobs away from minority and immigrant janitors; that Zankel and his partners use NAMCO to manage 394 Pacific and NAMCO terminated a contract with a union janitorial company in order to contract with a nonunion janitorial contractor for that building; that Trinity refused to hire the former janitor at the building and, in stead, hired a new one at substandard conditions; and that ''394 Pacific is not the first time this is happening. We intend to stop this immoral and unjust attack against all janitors by Mr. Zankel and his likes, NAMCO and Trinity.'' During this initial period of the demonstration, according to Choudhary, he observed many tenants entering and leaving the building without any difficulty.[79]

After several minutes of confining their marching to the public sidewalk, according to Choudhary, some of the demonstrators began walking inside the Stevenson Street arcade area. He approached an Oriental man, who had been speaking into a cellular telephone,[80] and told the man that the demonstrators shouldn't be on building property. Choudhary asked how long the demonstrators intended to continue marching, and the man replied, ''you'll find out.'' Shortly thereafter, he observed ''the gentleman with the bullhorn walking towards lobby door . . . saying on the bullhorn . . . 'come on, we are going in.''' Suddenly, three or four demonstrators followed him inside, and, before Choudhary could lock the doors, the remaining demonstrators came inside the building. In the lobby area, the demonstrators continued their chanting, with Choudhary describing the noise level as ''very loud.'' Choudhary repeatedly implored the man, with the bullhorn, to leave the building, saying ''you are not supposed to enter into the building, you have to get out''; the man ignored Choudhary and warned him not to touch anyone. Meanwhile, the demonstrators moved toward the elevators, which, according to Choudhary, except for the freight elevator,[81] appeared to be inoperative. At that point, Choudhary walked outside and, in order to permit some tenants and a delivery person to enter the building, unlocked the fire exit door, located near the loading dock. While he held the door open for people to enter, other tenants came down the stairs and departed through the door. Choudhary then went back into the lobby and observed 15 to 20 people, including the man with the bullhorn, leaving elevator No. 1. Thereon, the entire group walked through the lobby and out the front doors. They gathered on the sidewalk, the man with the bullhorn thanked them for participating and said they would return for a ''bigger demonstration,'' and the demonstrators dispersed.[82]

John Lathrop corroborated Choudhary as to the demonstration that day. According to Lathrop, shortly after noon, he received a radio message from Choudhary ''that there were some people in front of the building entrance.'' Lathrop was ''concerned,'' went to the entrance area, and, standing in front of the loading dock, ''I saw approximately 10 to 15 people that weren't usually in front of the building'' and they ''appeared to be carrying signs[83] and marching in an elliptical-shape pattern in the sidewalk in front of the building.'' He noted that the marchers were outside the arcade area and

[77] Among the tenants at 49 Stevenson, in June 1991, were NAMCO, Constructa USA, Kvaerner Hydropower, McCord Co., DataVision, Travel Age West Magazine, and the Yank Sing Restaurant.

Mike Boschetto testified that the day janitor position was reinstated at 49 Stevenson on July 17, 1990, with the janitor's hours being 6:30 a.m. until 10:45 a.m. and from 2:15 p.m. to 3 p.m. There is no evidence that he alerted Respondent that the day position had been reinstated. He further testified the janitor hours, in June 1991 had changed—the day janitor was present, in the building, from 6:30 a.m. until 3 p.m. and the night janitors worked from 6 p.m. until 1 or 2 a.m.. Meredith Suter, who, in June 1991, was NAMCO's property manager for 49 Stevenson, contradicted Boschetto with regard to the janitors' hours in June 1991, stating that the day janitor was present from 7 through 10 a.m. and from 2 until 3 p.m. and that the night crew was in the building from 5:30 or 6 p.m. to approximately 1:30 a.m..

[78] Shown a photograph of Yehya Hassan, Choudhary identified him as the individual, shouting into the bullhorn.

[79] At the time of the demonstration, employees of Monroe Schneider Carpeting were making a carpet delivery to the building. A delivery truck was parked, at the curb, in front of the loading dock, and the delivery people were carrying carpet from the truck to the freight elevator entrance at the loading dock. According to Choudhary, at the time of the marching and chanting, the deliverymen were ''standing by the truck,'' watching.

[80] Shown a photograph of Roy Hong, Choudhary identified him as the person speaking on the telephone.

[81] The freight elevator doors were open as it was on hold for the carpet delivery people.

[82] With regard to the carpet delivery, Choudhary did not know what happened to them and ''did not see them'' after the demonstrators departed. He believed that some carpet had been carried to the freight elevator prior to the start of the demonstration and, perhaps, some had already been put down.

[83] He described the ''signs'' as being composed of red cloth.

15 feet from the front doors. Lathrop recognized an Oriental man from an earlier demonstration and asked him not to trash the building, and the man replied that they had not planned on doing that. Also, he observed demonstrators distributing handbills to pedestrians. Moments after speaking to the Oriental individual, no more than 10 of the demonstrators went inside the building. Lathrop followed them, watching the people walk to the elevators, and he went immediately to the fire control closet and pressed the recall switches, which made the elevators return to the lobby and become inoperative. Lathrop then watched as some of the demonstrators get into the open freight elevator and go up to the third floor, stop, and continue up to the 14th or 15th floor. Lathrop then took one of the passenger elevators up to the third floor and discovered four or five people ''milling around'' in the lobby area. He asked them to leave; ''herded'' them into the waiting elevator, and rode down to the lobby with the demonstrators. They then left the building.[84] The record establishes that the demonstration ended at approximately 1 p.m.

Trinity commenced providing janitorial services at 394 Pacific Avenue on June 15, and, notwithstanding what Hong wrote, there is no record evidence of any immediate reaction by Respondent at 394 Pacific Avenue. However, 12 days later, on June 27, at approximately noontime, Zankel was in his office when he was advised by the receptionist that ''a large group of individuals'' was in the reception room and wanted to see him. Zankel instructed her to deny their request and telephoned building security, seeking the removal of the people. Moments later, security guards came to Zankel's office, and the people left his office. According to Zankel, his visitors left behind a leaflet, which bore the heading ''394 PACIFIC—NON UNION,'' named Zankel as one of the general partners of the partnership which owns 394 Pacific Avenue, NAMCO as the property manager, and Trinity as the janitorial contractor, and which states, ''Above mentioned owners and managers have taken [a janitor's] job away. . . . They have given the contract to a law breaking non-union contractor named above who pays sub standard wages with no benefits.''

Later, that same day, Zankel received, by facsimile transmission, the following letter from Roy Hong:

> We were very disappointed that you did not come out to greet us today. All we wanted to know was if you would be interested in representing us. Local 87 owns a building and needs legal representation. If you are interested, please give me a call. By the way, we have a very strict guideline when we use outside service. Unlike you, we don't use immoral, unscrupulous, and law breaking services. So, if you think you still qualify, by all means, call me. Anyways, I am attaching a copy of our strike sanction which we have just received today against your building. In case you don't know what that exactly means, you most likely won't get your building fixed up on time. If you have any questions, please feel free to call me.[85]

Attached to Hong's letter was a copy of a letter, to him, from the San Francisco Labor Council, advising of the granting of emergency strike sanction at 394 Pacific Avenue, and a copy of his letter to the Labor Council, requesting strike sanction so that Respondent could begin picketing immediately at 394 Pacific because NAMCO had contracted with nonunion Trinity.

Despite the ''strike sanction,'' no allegedly unlawful conduct occurred at 394 Pacific. However, according to building manager Meredith Suter, at 49 Stevenson, at approximately 4 p.m. on August 1, 1991, ''I observed approximately 45 to 50 demonstrators in front of [the building]. About . . . 25 to 30 of them came inside the arcade area, in front of the front doors. . . . The remaining people were in front of the building, but more on the sidewalk area, outside of the arcade.'' About 25 demonstrators were carrying red flags, on which was printed ''Justice for Janitors'' and ''Local 87,'' a man was making screeching sounds with a bullhorn, and Suter heard the chant, ''Hey, hey, ho, ho, nonunion buildings got to go.'' As to the demonstrators inside the arcade area, they were ''mostly milling around, yelling'' directly in front of the entrance. When she first heard the demonstrators, Suter had ordered that the front doors be locked, and, in order to permit tenants or visitors to enter and leave, she would unlock the door. On these occasions, the demonstrators would position their feet and bodies in the doorway, so that she could not lock the doors, and demand to enter. This occurred, at least, 10 times, and she denied entry each time. The police were called, and officers arrived at approximately 4:20 p.m. They forced the demonstrators to stay outside the arcade columns and, at that point, the demonstrators moved out onto the sidewalk, formed a fairly tight circle, and continued yelling and screeching the bullhorns for about 10 minutes. They dispersed at approximately 4:30 p.m.

Five days later, on August 6, another demonstration occurred. According to Suter, at approximately 11:50 a.m., she looked from her second floor office window and observed a group of ''about a hundred'' people, coming toward 49 Stevenson from the direction of Second Street. Some carried signs, attached to sticks, stating ''Strike FDIC, 25 Ecker, Local 87.'' She watched as the crowd approached her building when ''about half the group walked off of the street and came . . . inside the columns in front of the building into . . . the arcade area. . . . They remained there for about 3 to 5 minutes'' and ''were yelling 'Hey, hey, ho, ho, union busters got to go' and 'shut it down, shut it down!''' The remainder of the crowd stayed on the sidewalk, and, after three to five minutes, the entire group ''continued on, down towards Ecker Street.'' An hour later, Suter further testified, she observed the same size group of people coming toward the building from the direction of Ecker Street. ''And they did basically the same thing that they did when I'd seen them an hour earlier. They were walking on the street, and

[84] Lathrop did not know if the janitor was working in the building at the time of the demonstration. As to the carpet delivery, Lathrop testified that two people were laying carpet on one of the upper floors and that they had been utilizing the freight elevator to move the carpet.

[85] According to Zankel, ''there was a remodeling of the public areas of the building, the lobby, painting of the exterior, and a redoing of the exterior'' ongoing at 394 Pacific Avenue at that time. In this regard, a scaffolding had been erected along two sides of the building. Plant Contractors was the general contractor for the project, and subcontractors were working then.

then about half the group came inside the columns, into the arcade area. At this time, they stopped for one or two minutes and continued back on towards Second Street.'' The same signs were carried by the demonstrators, and they chanted the same slogans. Suter added that, on both occasions, ''in order to have them in front of the building, they extended beyond the arcade area, onto the sidewalk, and even into the street'' and that the people were ''just milling around'' and did not seem to be organized. While denying responsibility only for the demonstrations on August 6, Respondent failed to controvert any of the above testimony.

8. Case 20–CC–3196

The record establishes that the building located at 25 Ecker Street in San Francisco (25 Ecker) is at the corner of Jessie Street and Ecker Street (approximately one-third of a city block south of the intersection of Ecker and Stevenson) and is a 23-story office condominium building, owned by the Ecker Square Condominium Owners Association (the Owners Association), and that, as of August 1991, of the 34 office condominium units in the building, the FDIC owns 33 such units and the other is owned by a real estate investment trust.[86] Although the building is 23 stories in height, the lobby area, which is actually an atrium, encompasses the first 5 floors. The lobby/atrium is enclosed by glass, and the entrance is composed of four glass doors, which only open outward. The lobby/atrium is approximately 25 feet long, and the distance between the front doors and the rear elevators is 12-1/2 feet. In front of the entrance is an ''open plaza'' area, which is landscaped with flowers, large trees, and benches and which was described as being private property with public access—the city of San Francisco considers the area to be a ''mini-park.'' The plaza area is bordered by columns and large, white pillars or pylons.

The record discloses that, since June 1980, 25 Ecker has been managed by Brighton Pacific. In said capacity, the latter provides the annual budget for vendor services and contracts for all such services at the building, including janitorial, landscaping, pest control, heating, ventilation, and air conditioning. John Schmidt has been the property manager, at the building, for Brighton Pacific for 6 years. Neither the FDIC, Brighton Pacific, nor any other tenant of 25 Ecker employs janitorial employees or has ever had a collective-bargaining relationship with Respondent. Prior to May 1991, the Owners Association had contracted with International Service Systems (ISS), which has a collective-bargaining agreement with Respondent, for provision of a crew of janitors at 25 Ecker; however, in that month, after a bidding procedure, the Owners Association selected GMG Janitorial Maintenance (GMG) as the janitorial maintenance contractor for the building. On behalf of the Owners Association, in June, Brighton Pacific entered into a contract with GMG, with such becoming effective on August 1. The record further discloses that, as happened at 1 Ecker, at 631 Howard Street and 55 Hawthorne Street, at the Koret Building, at 260 California, and at 394 Pacific, Respondent became aware of the cancellation of a maintenance contract with a union signatory firm and undertook steps to prevent it. Thus, sometime in mid-May, Roy Hong, with whom Schmidt was not acquainted, telephoned the latter, saying ''[Respondent was] aware of the fact that the ISS contract was being replaced by GMG'' and arranged for a meeting on May 21. On that date, Hong and Richard Leung met with Schmidt in the latter's office at 25 Ecker. After the two Respondent officials introduced themselves, Hong ''basically asked if there was anything they could do as far as coming to an agreement, and meeting with anyone from the condo board to see if they could work out something to retain the contract at the building.'' Schmidt replied that the board of directors had already informed the new janitorial contractor that it would utilize that company's janitors at 25 Ecker. Leung said that ''we didn't want to get into positions over the contract being terminated with ISS Janitorial.'' Schmidt responded that the condominium board of directors had acted for two reasons; the level of service from ISS ''was going down'' and the board had a policy ''that all contracts would go into a three-year bid rotation, regardless of the level of service.'' The GMG maintenance contract became effective on August 1, and a GMG janitorial crew, consisting of four janitors, was ''scheduled to work from 7:00 p.m. til 4:00 in the morning,'' and their responsibility was to ''provide janitorial services to all the suites in the building,'' including vacuuming, emptying trash, dusting, polishing, touching up the carpet.'' For the janitorial work, GMG provides its own vacuum cleaners and buffing equipment, trash barrels on wheels, brooms, and mops, and the said equipment is left on site, each day, in janitor closets on each floor.

According to two FDIC employees, Everett Woldridge and Timothy Tanner, Respondent staged a demonstration at 25 Ecker on Tuesday, July 30. Woldridge testified that, at approximately 3:15 p.m., along with Tanner and another FDIC employee, Sandra Beeson, he went for coffee at a nearby Jack-in-the-Box restaurant. As they left 25 Ecker, Woldridge observed ''activity'' at the corner of Jessie and Ecker—people passing out red cloth banners or flags. Later, as they returned to the building, Woldridge observed that parked cars had effectively blocked traffic on Jessie Street and on Ecker Street, and, on Ecker Street, ''the crowd had grown,'' and people were continuing to distribute the red banners to those who had joined the crowd. The three FDIC employees walked through the throng and entered the 25 Ecker plaza, in which a crowd of approximately 50 people, standing no more than 10 feet from the front doors of the building, was facing the building, waving the red cloth flags, and yelling ''in unison with'' a man, who was shouting into a bullhorn. The noise level was ''very loud.'' As Woldridge approached the building doors, he observed that ''the doors were locked.'' The building security guard recognized them and unlocked the far left door for them to enter. Woldridge pulled it open, and, ''at that point, the people in the plaza rushed toward the building. And I was forced between the door. . . . It's a big glass door . . . and was stuck on my left foot, so the door couldn't go open any further. At that point, some sort of . . . dark red fluid was thrown against my back.'' He immediately turned his head and was confronted by a large, stocky Hawaiian or Samoan individual, who ''was bent over in a charge'' position and ''charged''

[86] Apparently, there are two condominium units on a floor, and these are divided into office suites. The owners may lease these offices, being responsible for their own leasing arrangements and procedures. In August 1991, some tenants of the building, besides the FDIC itself, were Strong and Associates, American Express, and an accounting firm.

into Woldridge from behind him, knocking him harder against the door. Thereafter, the crowd began swarming into the building, and ''I was literally forced with the flow of people from the front door to the . . . door of the elevator and pushed into it. The door remained open for less than 30 seconds before going up.'' Woldridge estimated that 35 people had squeezed into the lobby, and ''they were yelling and waving . . . the red banners.'' Also, the person, with the bullhorn, was inside the lobby, shouting into the bullhorn and ''it was hurting everyone's ears.'' Concluding, Woldridge stated that he heard no English spoken by anyone in the crowd and noticed no identification of any organization.

Timothy Tanner testified that he was ''out in the plaza having a cigarette'' at approximately 2 p.m. when he observed ''a group of people in front of the building.'' An hour later, he left the building with Woldridge and Beeson on a coffee break and noticed that a crowd of shouting people was massed on Ecker Street and that half were carrying red cloth flags, on which, printed in black, were the words ''Justice for Janitors, Local 87.'' The FDIC employees returned 20 minutes later, and, according to Tanner, ''the group of people had moved into the plaza. . . . And they were shouting and marching in a circle.'' Also, one person, who was standing ''very near the front door,'' was yelling, through a bullhorn, ''Let's go into the building.'' At this point, Tanner further testified, he and Woldridge approached the front doors of the building, and the security guard came over to a door in order to unlock it and permit them to enter. Meanwhile, the crowd, all of whom had been surging toward the front doors at the urging of the man with the bullhorn, ''broke'' and ''they started pushing and shoving us into the door,'' crushing them ''between the stationary door and the door that was being unlocked.'' Suddenly, ''the door was pulled open. And we were pushed in with the crowd. They were kicking and shoving and shouting. And the guy with the megaphone was . . . shouting into the [bullhorn].'' Tanner continued, stating that the crowd ''fell'' into the lobby. At that point, ''the middle elevator door opened, and I managed to get into the elevator,'' pulling Woldridge behind. The doors closed, and they went up. During cross-examination, Tanner said that the man, with the bullhorn, shouted in English and that he did not observe any attack on Woldridge.[87]

John Schmidt testified that another demonstration occurred on the following day, Wednesday, July 31. According to him, at approximately 3:30 p.m., while inside the 25 Ecker lobby, he observed a group of 40 to 50 people assemble inside the plaza area. At least 30 were carrying red cloth pennants, on which was printed ''Justice for Janitors, Local 87,'' ''and the entire group . . . began to march around in the plaza area, coming within approximately a foot of the door.'' Schmidt, who recognized Roy Hong amongst the demonstrators, added that the marchers seemed to be separated by only inches and that they shouted slogans such as accusing the Owners Association of taking milk from babies, as ''We'll shut it down,'' as ''Justice for Janitors,'' and as ''Hell no,we won't go.'' After a while, the crowd ''all came in a mass and stayed by the front doors . . . effectively blocking it.'' Schmidt described the people as being no more than a foot from the front doors and remaining there for ''about 10 minutes.'' He also stated that several tenants attempted to exit but could not do so ''because the people did not move away from the front.'' Schmidt further testified that, after 10 minutes, the demonstrators ''resumed walking around in the same path'' as before; that they did so for the next 45 minutes; but that ''periodically'' they would stop and move ''close to the doors'' and shout their slogans for a minute or two. Once, according to Schmidt, on a tenant leaving the building, a demonstrator placed a stick inside a doorway, not permitting the door to close, and, as Schmidt removed the stick, the individual ''clenched his fist.'' That afternoon, Schmidt also observed the distribution of leaflets by protesters, and the demonstration continued until 5:30 p.m.

Schmidt testified that another demonstration occurred on August 1 from 3:30 until 5:30 p.m. On this occasion, the witness, who was standing in the 25 Ecker lobby, observed the same sort of conduct as the day before, with approximately 70 to 80 people, about 30 to 50 of whom carried the same red pennants, inside the plaza area, marching ''around in the same pattern'' as previously, coming ''within the same distance of the front doors,'' and shouting the ''same'' slogans. Schmidt recognized Roy Hong and Richard Leung as being amongst the demonstrators, and, at one point, according to him, Hong noticed him in the lobby and shouted into a bullhorn ''that they would be coming into the building in approximately ten minutes'' and they ''wanted to go up to see Mr. Donald Pfeiffer,'' an FDIC official. Thereafter, Schmidt continued, Hong would ''periodically'' give a countdown to when the crowd would enter the building. ''And then the time lapsed, they did not come in on that occasion.'' Thereon, Hong announced a new 10-minute period after which, again, no one attempted to enter. Finally, at approximately 4:35 p.m., no more than 20 of the demonstrators ''burst'' through the front doors and into the building lobby whereon, for a minute or two, they were ''marching around and chanting.'' An FDIC official blocked others from entering, and Roy Hong, who had been one of those who came inside, began chanting through his bullhorn, and the marching continued, with an easel being knocked over. Police then arrived and evicted the demonstrators, who thereafter continued their marching in the plaza.

A final demonstration at this building occurred on August 6.[88] That day, apparently after leaving 49 Stevenson, the demonstrators moved on to 25 Ecker, arriving in front at approximately 11:50 a.m. John Schmidt estimated the crowd as numbering 250 people. Again viewing from the building lobby, he observed most to be carrying the same red banners, as used in the earlier demonstrations, and others were carrying what Schmidt considered to be standard picket signs (''white cardboard on a wooden stick''), reading ''FDIC, 25 Ecker, On Strike, Local 87.'' The demonstration, inside the plaza area, began, according to Schmidt, with the same marching in a circular path, with people bunched close to-

[87] Asked if there was anything unusual about Woldridge, Tanner stated that, when they were in the elevator, he asked if Tanner was all right and that ''he had been hit in the back with something that left a red stain on his shirt.''

[88] The record establishes that, on August 2, Brighton Pacific hand-delivered a letter, signed by John Schmidt and addressed to Richard Leung. Said letter, which Respondent did not deny receiving, states that GMG's janitors begin working at 7 p.m. and conclude at approximately 4 a.m. at 25 Ecker, that they are not present at any other time of the day, and that they do not use the front doors for entry.

gether and ''side by side.'' Then, at ''12:30 or so, they all converged on the . . . glass atrium . . . encompassing the whole atrium. . . . The people in front were up against the glass . . . doors and all available access to the glass on the sides and corners. And then they had people standing in a close . . . position behind them, bunch after bunch after bunch.'' The people were chanting ''We'll shut it down'' and ''just leaning against the glass, waving their pennants and signs and shaking the front glass doors. . . . People on the sides . . . had their arms up and were tapping on the glass to get our attention.'' Then, ''several people sat down,'' with their backs against the left door. Schmidt stated that this continued for 15 minutes, with the noise level ''twice as loud'' as previously. Then, the crowd returned to marching in their circular fashion. After a short while, the entire crowd moved out of the plaza and to the corner of Ecker and Jessie, ''and it appeared that there was someone calling out names.'' At this point, the police arrived and ordered the crowd not to block the building, and officers seemed to be ticketing cars that had been effectively blocking traffic on Ecker Street and Jessie Street. Finally, Schmidt noticed Roy Hong among the demonstrators that afternoon. Not only did Respondent concede responsibility for the demonstrations at 25 Ecker but also Respondent failed to offer any evidence, contradicting the foregoing accounts of what occurred.

As a defense against the allegations of secondary activity with regard to the conduct at 25 Ecker, Respondent argues that the contract between Brighton Pacific and GMG creates a joint employer relationship over the janitors. In this regard, John Schmidt testified that the Owners Association board of Directors has authority to hire employees of a vendor but denied that it had any supervisory or veto power over GMG's authority to hire its own employees for 25 Ecker. As to terminating janitors at 25 Ecker, Schmidt testified that, while Brighton Pacific has never done so, ''we have the right to request that someone be replaced if they're not performing.'' He then later explained that, if GMG refused such a request, ''when it came time for the end of the contract, it wouldn't be renewed.'' As to directing the work of the janitors, the record establishes that GMG has a supervisor for the janitor crew in the building and that Schmidt denied monitoring their work. However, he conceded that, while not having authority to tell janitors how to perform their work, Brighton Pacific does possess authority to tell a janitor to perform a particular task ''if they're not conforming to the cleaning schedule.'' Further, Schmidt testified that Brighton Pacific is responsible for reviewing GMG's performance in accord with the contract and that he does so ''independently.'' According to him, such means that ''when I'm in the building I look for things. Or I come in early. That's when we would generally check . . . the previous night's cleaning.'' He added that, if problems exist, he discusses them with the GMG field supervisor. As to other matters, Schmidt testified that GMG is solely responsible for granting time off to janitors or payroll processing and that, as the contractual cost is fixed, Brighton Pacific need not increase payments to GMG if the latter adds janitors or increases their rates of pay.

B. *Analysis*

1. General legal framework

Based on the foregoing, the instant consolidated complaints allege that Respondent engaged in conduct violative of Section 8(b)4)(i) and (ii)(B) of the Act. That provision provides, in pertinent part, as follows:

> Sec. 8(b) It shall be an unfair labor practice for a labor organization or its agents—
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> . . . .
>
> (4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:—
>
> . . . .
>
> (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person . . . . *Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;*
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> . . . .
>
> . . . *Provided further*, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public . . . of . . . a primary labor dispute . . . .

As the Supreme Court has explained, the above-quoted provision of the Act reflects ''the dual congressional objectives of preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of shielding unoffending employers and others from pressure in controversies not their own.'' *NLRB v. Denver Building Trades Council*, 341 U.S. 675, 692 (1951). Thus, while Section 8(b)(4)(B) of the Act leaves unfettered a labor organization's traditional right to engage in direct action against an employer, with which it is engaged in a primary labor dispute, including the right to induce the primary employer's employees to engage in a strike or refusal to handle goods, the provision's more ''narrowly focused'' purpose is to ''restrict the area of industrial conflict insofar as this could be achieved by prohibiting the most obvious, widespread, and . . . dangerous practice of unions to widen that conflict'' and coerce neutral employers not concerned with the primary dispute. *Carpenters Los Angeles County District Council Local 1976 v. NLRB*, 357 U.S. 93, 100 (1958).

There are essentially two elements necessary to establish a violation of Section 8(b)(4)(i) and (ii)(B) of the Act. First, a labor organization must engage in conduct which induces or encourages individuals to engage in a strike or refusal to

perform services for their employer or which threatens, coerces, or restrains any person. Further, the object of the foregoing conduct must be to force or require any person to cease dealing with or doing business with any other person. *Electrical Workers Local 761 v. NLRB*, 366 U.S. 667, 673 (1961); *Iron Workers Local 378 (McDevitt & Street)*, 298 NLRB 955, 958 (1991); *San Francisco Building Trades Council (Goold Electric)*, 297 NLRB 1050, 1055 (1991); *Los Angeles Newspaper Guild Local 69 (Hearst Corp.)*, 185 U.S. 303, 304 (1970). Moreover, ''it is clear that a violation of [the above provision of the Act] cannot be based [merely] on the desire or hope of a labor organization that its [conduct] will influence individuals to withhold their services nor on the effect that [conduct] has had in that regard.'' *McDevitt & Street, Inc*., supra; *Goold Electric*, supra. Also, while a cease dealing with or doing business with object is, of course, required for finding a violation, it is not necessary that such be ''the sole object'' of the allegedly unlawful conduct. *Denver Building Trades Council*, supra at 689. Finally, as pointed out by counsel for the General Counsel, it is no less a violation of Section 8(b)(4)(B) of the Act for a labor organization to disrupt the business of an unoffending neutral employer, which has no business relationship with the primary employer, in the hope that said neutral will be pressured into interceding in a labor dispute between the labor organization and the primary employer. *Iron Workers Local 272 (Miller & Solomon)*, 195 NLRB 1063 (1972); *Hearst Corp*., supra at 322.

With regard to 8(b)(4)(i) and (ii) violative conduct, it is, of course, clear that picketing, a form of conduct which ''may induce action of one kind or another irrespective of the nature of the ideas which are being disseminated,''[89] induces or encourages employees within the meaning of Section 8(b)(4)(i) and restrains or coerces employers within the meaning of Section 8(b)(4)(ii) and that individuals patrolling and carrying placards attached to sticks constitutes the classic form of picketing involved in alleged secondary boycott cases. *Teamsters Local 315 (Atchison, Topeka & Santa Fe Railway Co.)*, 306 NLRB 616 (1992); *Teamsters Local 677 (J. H. Hogan, Inc.)*, 299 NLRB 499 (1990); *McDevitt & Street*, supra. It is also true, however, that neither patrolling alone nor patrolling combined with the carrying of placards are essential elements to a finding of picketing; rather, the ''important'' or essential feature of picketing is the posting of individuals at entrances to a place of work. *Laborers Local 389 (Calcon Construction Co.)*, 287 NLRB 570, 573 (1987); *Teamsters Local 282 (General Contractors Assn. of New York)*, 262 NLRB 528, 529 (1982); *Lumber & Sawmill Workers Local 2797 (Stoltze Land & Lumber Co.)*, 156 NLRB 388 (1965). Moreover, 8(b)(4)(i) and (ii) violative conduct may involve conduct which does not constitute actual picketing but which, nevertheless, induces or encourages employees and restrains or coerces employers. Thus, the Board and the courts have recognized a concept known as ''signal picketing,'' which, as with actual picketing, concerns conduct operating ''as a signal to induce action by those to whom the signal is given.'' *Iron Workers Local 433 v. NLRB*, 598 F.2d 1154 (9th Cir. 1979); *Teamsters Local 688 (Levitz Furniture Co. of Missouri)*, 205 NLRB 1131, 1133 (1973). Such cases typically involve the stationing of union business agents near an entrance to a jobsite or the placing of placards near an entrance—positioned so that anyone approaching can read the printed message. *Calcon Construction*, supra; *Operating Engineers Local 12 (Hansel Phelps Construction Co.)*, 284 NLRB 246, 248 (1987). Also, 8(b)(4)(i) and (ii) violative conduct may be ''a form of picketing'' or actions which ''[overstep] the bounds of propriety and [go] beyond persuasion'' so as to become ''coercive to a very substantial degree.'' *Mine Workers District 29 (New Beckley Mining Corp.)*, 304 NLRB 71, 72 (1991); *Service Employees Local 399 (William J. Burns International Detective Agency)*, 136 NLRB 431, 437 (1962). Thus, in *New Beckley Mining*, finding that an estimated crowd of between 50 and 160 persons gathered in the parking lot and surrounding areas of a motel at approximately 4 or 4:30 a.m., the Board concluded that such '''mass activity''' constituted a form of picketing, and, in *Burns Detective Agency*, finding that groups, varying in size from 20 to 70 persons and comprised of members of a labor organization, who were not carrying placards but were distributing handbills, marched in an elliptical path immediately in front of the main entrance to an exhibition hall and caused patrons to force their way through in order to enter the building, the Board, while abstaining from labeling the conduct, concluded that such was coercive within the meaning of Section 8(b)(4)(ii). Although not explicated as such, the Board's *New Beckley* and *Burns Detective Agency* analysis seemingly explains a finding that photographing the cars of neutrals as they entered a jobsite constituted 8(b)(4)(i) and (ii) conduct. *General Services Employees Local 73 (Andy Frain, Inc.)*, 239 NLRB 295, 306 (1978). Finally, besides picketing or related conduct, overly broad or ambiguous threats of picketing may constitute 8(b)(4)(ii) violative conduct. *Food & Commercial Workers Local 506 (Coors Distributing Co. of San Jose)*, 268 NLRB 475, 478 (1983); *Associated Musicians of Greater New York Local 802 (Huntington Town House)*, 225 NLRB 559 at fn. 1 (1976).

Turning to the matter of determining whether a labor organization's conduct is for the 8(b)(4)(B) proscribed cease doing business object, it must be noted that the traditional picketing and related conduct herein, for the most part, occurred in front of commercial office buildings, and an office building has been classified by the Board, in cases involving conduct allegedly violative of Section 8(b)(4)(B) of the Act, as a common situs. *Building Service Employees Local 254 (Lechmere Sales)*, 173 NLRB 280 (1968). In common situs cases, evidence of object often is not readily discernible, and it is often difficult to distinguish lawful primary activity from unlawful secondary conduct. Nevertheless, in each such case, ''the controlling consideration [must be] to require that the picketing be conducted so as to minimize its impact on neutral employers insofar as this can be done without substantial impairment of the effectiveness of the picketing in reaching the primary employees.'' *Electrical Workers IBEW Local 970 (Interox America)*, 306 NLRB 54, 55 (1992). It is well settled that, in a common situs situation, in order to ascertain whether a labor organization's picketing conforms with the Board's above-stated concern and, hence, constitutes lawful primary activity, such must be analyzed under the *Moore Dry Dock* standards. *Sailors Union (Moore Dry Dock)*, 92 NLRB 547, 549 (1950); *Service Employees*, supra. Thus, in

[89] *Teamsters Local 802 v. Wohl*, 315 U.S. 769, 776 (1942) (Douglas, J., concurring).

order to be considered to be primary activity, the labor organization's picketing must meet the following criteria: ''(1) [It] must be limited to times when the primary employer's employees are actually present at the common site; (2) [it] must be limited to 'places reasonably close' to the operations of the primary employer's workers; (3) the picket signs must show clearly that the dispute is with the primary employer alone; and (4) the primary employer's workers must be engaged in the company's normal business.'' *Los Angeles Building & Construction Trades Council (Silver View Associates)*, 216 NLRB 307, 308 (1975). Further, the Board has long held that ''in a common situs situation the failure of a picketing union to comply with any one of the *Moore Dry Dock* criteria gives rise to a strong, albeit rebuttable presumption that the picketing had an unlawful secondary object.'' *New Beckley Mining Corp*., supra at 72; *Service Employees Local 87 (Pacific Telephone)*, 279 NLRB 168, 175 (1986). Finally, it is also well settled that the foregoing standards are ''only guidelines not to be mechanically applied.'' Rather, they are to be applied with ''common sense'' and in compliance with ''the dual congressional objectives'' in enacting the secondary boycott provisions of the Act. Accordingly, ''while compliance might give rise to a rebuttable inference of primary picketing, the totality of the evidence may reveal an underlying secondary objective and overcome the presumption.'' *McDevitt & Street Co*., supra at 958.

2. The legality of Respondent's conduct in light of the applicable legal principles

Initially, with regard to the instant complaints, it is alleged that Respondent was engaged in primary labor disputes with the nonunion building maintenance companies herein (Trinity, West Bay, Complete, and GMG) and that Respondent's disputes are not with the various building owners, property managers, or tenants. Except with regard to the relationship between IMA and Complete, a matter to be discussed infra, counsel for the General Counsel is correct on these points. While it might seem plausible to assert that Respondent's real disputes were with Koret and the various building managers for contracting with the above janitorial contractors, close scrutiny reveals the specious nature of such a contention. Thus, the record evidence clearly establishes that, in launching its ''Justice for Janitors'' campaign, Respondent evidenced its determination to attack the nonunion status of each of the above building maintenance contractors and that, rather than the generic fact of subcontracting by the building owners and managers, the nonunion status of the contractors was Respondent's primary concern. Furthermore, the record also establishes that neither Koret, the property managers, nor any tenant employs janitors; therefore, as a matter of law, Respondent's primary labor disputes herein must have been with the nonunion building maintenance contractors, who employ the employees whom Respondent nominally represents. *Edward J. DeBartolo Corp. v. NLRB*, 485 U.S. 568 (1988); *Cedar Rapids Building Trades Council (Siebke-Hoyt & Co.)*, 283 NLRB 1155, 1157 (1987).

Turning to the complaint in Case 20–CC–3162, the uncontroverted record evidence[90] is that, in furtherance of its primary labor dispute with Trinity, regarding the latter's status as a nonunion contractor,[91] Respondent engaged in traditional picketing, for which conduct it conceded responsibility, at 49 Stevenson, during the first 3 weeks of June 1990, for, at least, 3 days of each week. Based on the uncontroverted and credited testimony, I find that Trinity was the building maintenance contractor at 49 Stevenson at all times material herein; that, on the days of the picketing, a group of between 15 and 30 individuals marched in a circular formation, on the Stevenson Street side of the building, in front of the main entrance; that the picketing commenced each day at approximately 3:30 p.m. and continued for an hour or two; that the pickets carried placards reading ''Justice for Janitors—Local 87,'' ''Unfair Labor Practices—Local 87,'' ''no layoffs no paycuts—Local 87,'' and ''decent peaceful contract—Local 87''; and that, despite acknowledging receipt of attorney Rechtschaffen's hand-delivered June 11 letter, informing it that Trinity would no longer have a day janitor at 49 Stevenson as of that date and that Trinity's janitors would only be present between 6:30 p.m. and 1 a.m., Respondent continued the aforementioned picketing during the daytime. As stated above, as a matter of law and based on the substantial record evidence herein, I believe that, at all times during the picketing, Respondent was engaged in a primary labor dispute with Trinity; however, there is no

[90] The respective testimony of the witnesses, who testified on behalf of the General Counsel (Michael Boschetto, Ruth Wheeler, Richard Calhoun, Gerald Slemp, Bill Miranda, and Linda Taggart) was uncontroverted and corroborative with regard to the picketing at 49 Stevenson during the first 3 weeks of June 1990. While noting internal inconsistencies in the testimony of Boschetto and troubling inconsistencies between the testimony of Wheeler and that of Boschetto as to discontinuation of Trinity's subcontracting of the night janitorial work, I found neither Boschetto nor Wheeler or the remainder of the above witnesses inherently dishonest so as to discredit any of them notwithstanding their uncontroverted testimony regarding the picketing.

[91] I have no doubt that Respondent also was concerned with Trinity's subcontracting of janitorial work to Maurice Diaz, a contractor whose terms and conditions of employment for his employees allegedly were violative of various State of California labor code provisions, and the filing of a lawsuit against Diaz and Trinity immediately after the picketing at 49 Stevenson confirms this. However, the circumstances of this case convince me that Respondent's overriding motivation for picketing at 49 Stevenson, during the first 3 weeks of June 1990, was Trinity's status as a nonunion building maintenance contractor. Thus, in the first week of the picketing, Michael Boschetto spoke to Richard Leung, with the latter informing Boschetto that he wanted to speak to Boschetto with regard to how Trinity did business. Boschetto asked, ''How's that,'' and Leung replied, ''non-union.'' Leung failed to deny this conversation, and Boschetto shall be credited as to what was said. Furthermore, at various times during the 3 weeks of picketing, Respondent's pickets distributed a handbill, in front of the building, which asserted that the building management was using a nonunion janitorial contractor and that management was taking jobs from union members and implored tenants to inform the building management how ''displeased'' they were over this ''scam.'' While the leaflet refers to NAMCO's role in subcontracting to Trinity, I have discussed above that, as a matter of law and fact, Respondent could not and did not have a primary labor dispute with NAMCO, which employed no janitors. Finally, Respondent's picketing at 49 Stevenson seems to have been done in conjunction with similar conduct at 1 Ecker, located across the street from 49 Stevenson, and that picketing apparently was aimed at West Bay, a nonunion janitorial company, with whom Respondent has had a longstanding labor dispute.

record evidence that Trinity's name ever appeared on Respondent's picket signs during the period of the picketing.

Based on the foregoing, the complaint alleges and counsel for the General Counsel argues that Respondent's picketing at 49 Stevenson, during the first 3 weeks of June 1990, was violative of Section 8(b)(4)(i) and (ii)(B) of the Act. In this regard, based on the leaflet, which the pickets distributed, there can be no doubt that Respondent's conventional picketing, during this period, was aimed at NAMCO and the tenants of 49 Stevenson and, therefore, constituted coercive conduct within the meaning of Section 8(b)(4)(ii) of the Act. *Atchison, Topeka & Santa Fe Railroad Co*., supra; *Interox America*, supra; *J. H. Hogan, Inc*., supra; and *McDevitt & Street Co*., supra. The remaining, and central, issue herein concerns the object of Respondent's picketing—was such primary or unlawful secondary picketing with a cease doing business objective. Utilizing the applicable *Moore Dry Dock* criteria for lawful, primary common situs picketing, it is readily apparent the instant picketing failed to conform with three of the four evidentiary standards, thereby indicating a secondary intent. Thus, at no time during the course of the picketing did Respondent's picket signs identify Trinity as the employer with whom Respondent was engaged in the primary labor dispute. *Goold Electric, Inc*., supra at 1050 fn. 1; *Service Employees Local 87 (Stay-King Maintenance Co.)*, 279 NLRB 168 (1986). Also, on and after June 11, Trinity's janitors were no longer at 49 Stevenson between the hours of 1 a.m. and 6:30 p.m., and, notwithstanding knowledge of this fact, Respondent continued to picket at the building, after June 11, from 3:30 to approximately 5 p.m. when no Trinity employees were working there. As with the failure to identify the primary employer on the picket signs, picketing at times when the primary employer's employees are not present and are not engaged in their normal work evidences a secondary object of the picketing. *Electrical Workers IBEW Local 3 (Kidder Peabody & Co.)*, 270 NLRB 1025, 1028 (1984); *Sheet Metal Workers Local 80 (Ciamillo Heating & Cooling)*, 268 NLRB 4, 8 (1983); *Service Employees Local 77 (Thrust IV)*, 264 NLRB 628 (1982). Besides a failure to adhere to the *Moore Dry Dock* criteria, Respondent's secondary objective can be inferred from the handbill, which was distributed during the picketing, with said handbill falsely casting the responsibility for the picketing on, and identifying as the entity with whom Respondent was engaged in the primary labor dispute, the building manager, NAMCO. *NLRB v. Service Employees Local 77*, mem. 753 F.2d 1083 (9th Cir. 1985); *Pacific Telephone*, supra at 177. In these circumstances, I am convinced that the picketing at 49 Stevenson was intended to force NAMCO to cease doing business with Trinity and to pressure the 49 Stevenson tenants to, in turn, bring pressure to bear on NAMCO to cease doing business with Trinity.

As a defense to these allegations and those in the other, consolidated complaints, Respondent's counsel raises a free speech issue, arguing that ''the public has a right to know, and [Respondent] has a right to inform the public'' and that the General Counsel may not limit the picketing to times after the business world has gone home and the streets are deserted. I find no merit in this argument. Thus, the issues herein concern Respondent's picketing activities; there are no complaint allegations regarding handbilling, and, at any time of day, at 49 Stevenson or at any other location, Respondent may truthfully advise the public of its concerns and objectives, through handbilling, without fear that such would be subject to the secondary boycott provisions of the Act. *DeBartolo Corp*., supra. However, if Respondent chooses to advise the public of its labor disputes through picketing, as it did in this and the other cases, notwithstanding the inconvenience caused by conformity to the Board's *Moore Dry Dock* standards, Respondent's ''interest in communicating its message to the passing public must yield to the attainment of the Congressional objective of shielding neutral employers and their employees from enmeshment in . . . Respondent's dispute with primary employers.'' *Interox America*, supra at 56 (1992). Further, assuming that the picketing at 49 Stevenson was for the purpose of bringing additional pressure to bear on Trinity resulting from its continued subcontracting of work to Maurice Diaz, the failure to conform to the *Moore Dry Dock* standards created a rebuttable presumption that said picketing also had a secondary object (*New Beckley Mining Corp*., supra), and, as stated above, it is well settled that if an object is secondary, the picketing must be found violative of the provisions of Section 8(b)(4)(B) of the Act (*Denver Building Trades Council*, supra). Accordingly, it must be held that Respondent's picketing at 49 Stevenson, during the first 3 weeks of June 1990, was violative of Section 8(b)(4)(ii)(B) of the Act, and I so find.[92]

With respect to the complaint in Case 20–CC–3164, the uncontroverted record evidence[93] is that, in furtherance of its primary labor dispute with West Bay, regarding the latter's status as a nonunion building maintenance contractor,[94] Re-

[92] I shall, accordingly, recommend dismissal of the 8(b)(4)(i)(B) allegation. Thus, neither the picket signs nor the handbill urged employees of tenants or of NAMCO not to enter the building and no oral appeals were made. Moreover, there is no record evidence that employees of any tenant were members of a labor organization, and no strike sanctions from any other labor organization were sought. In these circumstances, it can not be said that Respondent's picketing was designed to induce or encourage any employee to refuse to work. *Laborers Local 332 (C.D.G., Inc.)*, 305 NLRB 298, 305 (1991); *New Beckley Mining Corp*., supra at 73; *Burns Detective Agency*, supra at 437.

[93] The witnesses, who testified on behalf of the General Counsel, Bill Miranda and Lisa Baddeley, were uncontroverted with regard to the events of June 14 and July 9, 1990. However, as set forth above, Miranda and Baddeley each testified inconsistently with regard to West Bay's subcontracting of work and they also contradicted each other on that point. However, their respective testimony, concerning the events of July 9, was corroborative. In these circumstances and noting that their accounts of the events of June 14 and July 9 were uncontroverted, I shall credit Miranda as to what occurred on June 14 and Miranda and Baddeley as to what occurred on July 9.

[94] There can be no doubt that, while, on June 1, Richard Leung mentioned to Lisa Baddeley that West Bay assertedly paid below minimum wage and hired children, the essence of Respondent's primary labor dispute with West Bay concerned its status as a nonunion contractor. Thus, since, at least, 1987, Respondent has been engaged in a labor dispute with West Bay over its nonunion status. Further, in a July 3 letter to Baddeley, Roy Hong wrote that he understood that Gallelli Real Estate was taking bids from union janitorial contractors and hoped that one such firm would be chosen. Also, Richard Leung told Baddeley that he would call off the July 9 demonstration if Gallelli chose a union contractor. Further, the leaflet, which Respondent distributed at 49 Stevenson specifically referred to West Bay's nonunion status. Finally, while it might be argued that Leung's conversation with Baddeley evidences that the primary dis-

Continued

spondent engaged in traditional picketing at 1 Ecker on June 14, 1990, and in a demonstration in front of the building on July 9 of that year, conduct for which it admitted responsibility. In light of the uncontroverted record evidence and my credibility resolutions, I find that, at the time of the above conduct, West Bay was the janitorial contractor at 1 Ecker; that, at some point during the afternoon of June 14, 1990, Respondent's pickets, carrying placards, reading ''No Service Cuts—Local 87'' and ''No Layoffs—Local 87,'' moved from in front of 49 Stevenson to across the street and inside the arcade area of the 1 Ecker building and commenced picketing at that location. While there is no indication of how long the pickets remained at the 1 Ecker building, the record establishes that, at no point during the picketing, did the placards name West Bay as the employer with whom Respondent was engaged in a primary labor dispute and that no employees of West Bay were working inside 1 Ecker during the picketing. I further find that, on July 9, 1990, Respondent commenced a demonstration in front of the 1 Ecker building at approximately 11:30 in the morning; that a maximum of 20 individuals, many wearing red T-shirts with ''Justice for Janitors'' printed on them, participated; that, at the outset, the demonstration consisted of the attempted attaching of a large, white banner, bearing the ''Justice for Janitors'' message, to the building and participants standing on Ecker Street, waving red cloth flags, on which were printed the words ''Justice for Janitors,'' listening to folk singers and chanting along in unison with a person on a bullhorn; that, eventually, the participants moved inside the 1 Ecker arcade and began marching in a circular path while blowing on whistles and chanting loudly; that, at one point, demonstrators attempted to enter the building but were stopped by security guards; that, on another occasion, Lisa Baddeley exited the building through the front doors and requested that they reduce the noise level of the demonstration and was immediately surrounded by 12 to 15 demonstrators, who were shouting at her and standing so close to the doors that they could not have opened; that Baddeley escaped back inside the lobby, calmed down, and again ventured outside; that she again was surrounded by demonstrators and, when she demanded that they leave 1 Ecker's property, was told by Roy Hong that none of the demonstrators understood English; and that, with Hong standing next to her, at one point, a female demonstrator yelled, ''We're gonna come back here until the property management sign the union contract.''

The complaint alleges and counsel for the General Counsel argues that the conventional picketing on June 14 and the demonstration on July 9 were both violative of Section 8(b)(4)(i) and (ii)(B) of the Act. Of course, there can be no dispute that the traditional placard picketing on June 14 constituted 8(b)(4)(ii) violative conduct. *Atchison, Topeka & Santa Fe Railroad Co.*, supra; *Interox America*, supra; *J. H. Hogan, Inc.*, supra; and *McDevitt & Street Co.*, supra. As to what occurred on July 9, while the complaint characterizes the conduct as ''patrolling and signal picketing,'' counsel argues that, however the temporary blocking of the doors, the surrounding of Baddeley, the attempt to enter the building, the marching and excessive amount of noise in front of the entrance, and the attaching of the large banner to the building are characterized, such clearly constituted unlawful, ''confrontational conduct.'' I agree. Thus, it is beyond dispute that Respondent's tactics, on July 9, made ingress to and egress from 1 Ecker more difficult and that the dissemination of publicity, regarding its dispute with West Bay, did not require the tactics utilized by Respondent. Indeed, what occurred, beyond the folk singing and music, can only be described as constituting a form of restraint and coercion on Gallelli and on the building tenants—a fact one may infer from the excessive noise, the harassment of Baddeley, and the failed effort to enter the building. Whether such may be characterized as picketing is questionable, but, at the very least, what occurred that day certainly constituted a form of picketing, conduct overstepping ''the bounds of propriety'' and going ''beyond persuasion so that it became coercive'' within the meaning of Section 8(b)(4)(ii) of the Act. *New Beckley Mining Corp.*, supra; *Burns Detective Agency*, supra, 136 NLRB 431 (1962).

As to whether the foregoing acts and conduct were intended for a proscribed object, the salient facts, regarding the June 14 picketing, are that West Bay's name never appeared on Respondent's picket signs; that the picketing occurred at a time when no janitorial employees of West Bay were working inside 1 Ecker; and that, therefore, there was noncompliance with three of the *Moore Dry Dock* criteria and the establishment of a rebuttable presumption of unlawful, secondary picketing. *Goold Electric*, supra; *Stay-King Maintenance Co.*, supra; *Kidder Peabody*, supra; and *Ciamillo Heating & Cooling*, supra. Likewise, based on the record as a whole, I believe that Respondent's ''picketing'' on July 9 was for a secondary object. Thus, Respondent failed to comply with the *Moore Dry Dock* criteria and displayed nothing that would have identified the nature of the dispute that led to the ''picketing'' or the party with whom there was a dispute. *New Beckley Mining Co.*, supra at 72. Further, during a telephone conversation shortly before the demonstration on July 9, Richard Leung told Baddeley ''that if I did go with a union janitorial contractor, if I signed even though it wouldn't go start until August or September . . . he would indeed stop the planned demonstration,'' and after Baddeley refused to look at other bids, Leung said she would ''be very sorry.'' What must be characterized as a threat by Leung evidences Respondent's objective of forcing Gallelli to cease doing business with West Bay. *Service Employees Local 254 (Janitronic, Inc.)*, 271 NLRB 750, 752 (1984). Finally, the statement of the female demonstrator, during the July 9 ''picketing,'' that Respondent would continue demonstrations until Gallelli executed a union contract, further illustrated the secondary nature of Respondent's conduct.[95] Accordingly, based on the foregoing, and the record as a whole, I find that Respondent's June 14 and July 9 acts and conduct, which were aimed at Gallelli and at the building tenants, in front of 1 Ecker were violative of Section 8(b)(4)(ii)(B) of the Act.[96]

pute herein was between Respondent and Gallelli, I have previously discussed that, as a matter of law and fact, Respondent's primary labor dispute herein was with West Bay and not with Gallelli, which employed no janitorial employees.

[95] Inasmuch as Roy Hong was standing next to the women as she spoke and said nothing to indicate disapproval, he must be held to have ratified what she said. *Avis Rent-A-Car System*, 280 NLRB 580 at fn. 3 (1986).

[96] As with Respondent's picketing at 49 Stevenson, there is no record evidence that employees of any tenant were members of a

Turning next to the complaints in Cases 20–CC–3165, 20–CC–3168, and 20–CC–3174, the acts and conduct concerned with the 631 Howard and 55 Hawthorne buildings, for which Respondent conceded responsibility, the uncontroverted record evidence[97] is that, engaged in a primary labor dispute with West Bay, involving the latter's status as a nonunion building maintenance contractor,[98] Respondent engaged in conventional picketing at the two buildings on August 3, 1990; on August 24, threatened JMA's attorney, Culver, with renewed picketing if JMA did not award the building maintenance contract for the buildings to a union signatory contractor and terminate West Bay; and, on November 7, engaged in confrontational and coercive conduct and picketing in front of the two buildings. More specifically, I find that, at all times material herein subsequent to August 1, West Bay was the janitorial contractor for the two buildings; that, as of August 2, a day janitor was employed at the buildings; that, on or about August 1, despite representing no employees at the two buildings, Respondent sought and received, from the San Francisco Labor Council, strike sanction against 631 Howard and 55 Hawthorne; that, late in the afternoons of August 1 and 2, Respondent engaged in picketing at the front entrance to 55 Hawthorne and at the front and construction entrances to 631 Howard with placards reading ''West Bay Unfair, Local 87'' and ''West Bay on Strike, Local 87''; that, on August 2, the attorney for West Bay drafted and hand-delivered a letter, stating that, effective immediately, employees of West Bay and its subcontractors only would be working in the two buildings during the hours 6 p.m. through 2 a.m. each day, to Respondent; that Respondent acknowledged receipt of said letter; that, notwithstanding said letter and the absence of any West Bay janitors in the buildings, on August 3, commencing at 7 a.m. and continuing throughout the day, Respondent picketed at the main entrances to 55 Hawthorne and 631 Howard and the construction entrance to 631 Howard with placards, reading ''West Bay, Unfair, Local 87'' and West Bay, On Strike, Local 87''; and that, although scheduled to perform work that day, no employees of any of the construction subcontractors reported for work at 631 Howard. I further find that, prior to August 24, Respondent's plan was to resume picketing at the two buildings on August 27; that, on Friday, August 24, JMA attorney, David Culver, spoke by telephone with Roy Hong regarding the building maintenance work at 55 Hawthorne and 631 Howard and the possible replacement of West Bay with a union signatory contractor; that, during said conversation, after Culver said he doubted whether any union contractor could submit a bid at a price competitive with the West Bay contract, Hong said Respondent would resume picketing on Monday morning as JMA had not done what it had committed to do; that Culver replied that a reserved gate system would be in place and that no West Bay employees or those of its subcontractors would be present except during the hours 6:01 p.m. through 2 a.m.; that Hong responded that the problem was JMA's failure to change its contract from West Bay to a union contractor and that the earlier reserved gate system had been tainted and Respondent would engage in picketing at all entrances to the buildings; that Culver then asked what it would take to forestall a resumption of the picketing and Hong said that ''it would take an agreement on JMA's part to go union''; that Culver then warned that picketing in noncompliance with the reserved gate system or at times other than when West Bay was present would be unlawful; and that Hong said Respondent would be there at 6 a.m. to resume picketing. I also find that, in response to a letter from Hong, in which he accused JMA of breaching an agreement to hire a union building maintenance contractor, on November 5, JMA's attorney wrote to Respondent, stating that there had never been any agreement to hire a union contractor and that JMA's decision was to continue its building maintenance contract with West Bay;

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labor organization, and no strike sanctions from any other labor organization were sought. In these circumstances, it can not be said that Respondent's picketing was designed to induce or encourage any employee to refuse to work. *C.D.G., Inc*., supra; *New Beckley Mining Corp*., supra; *Burns Detective Agency*, supra.

[97] With regard to Case 20–CC–3165, the witnesses on behalf of the General Counsel were Bill Miranda and Rita Hernandez; however, only the latter testified as to the allegedly unlawful picketing and was uncontroverted on that subject. While Hernandez' testimony was internally inconsistent with regard to when she first became aware of West Bay's use of subcontractors and with her pretrial affidavit with regard to the gate designation sign language, she did not appear to be an inherently dishonest witness and, given that her testimony, concerning the picketing, was uncontroverted, I shall credit her version of the events at issue. Concerning Case 20–CC–3168, the main witness, as to the complaint allegation was Attorney David Culver. While noting that the witness' testimony was contradictory and inconsistent with his contemporaneous notes of the crucial August 24 telephone conversation with Roy Hong, Culver appeared to be an honest and forthright witness, and his testimony was uncontroverted by Roy Hong, who was not called as a witness by Respondent. While averring that Hong was no longer employed by Respondent and no longer in San Francisco, Respondent's counsel offered no explanation why he would be unavailable for subpoena. In these circumstances, given my view as to his testimonial demeanor, I shall credit Culver herein. Finally, as to Case 20–CC–3174, the General Counsel's witness was Leopoldo Abad. His testimonial demeanor was that of an honest and candid witness, and, noting that Abad was uncontroverted, I shall credit him herein.

[98] There can be no question that what occurred at 631 Howard and 55 Hawthorne was a continuation of Respondent's ''Justice for Janitors'' campaign against nonunion building maintenance contractors, with West Bay being, perhaps, number one on Respondent's hit list. Notwithstanding that Respondent publicized a demonstration at 631 Howard and 55 Hawthorne in order to protest West Bay's use of Maurice Diaz as a subcontractor and the latter's asserted violations of the California labor code, that the latter's nonunion status was the motivation for Respondent's conduct at these two buildings cannot be questioned. Thus, on August 1, 1990, JMA received a letter from Respondent, stating that their dispute was caused by JMA's act of replacing its union signatory janitorial contractor with West Bay. Moreover, during the August picketing, West Bay was named on Respondent's picket signs. Further, during telephone and face-to-face conversations with David Culver later in August, Richard Leung and Roy Hong told him that they wanted JMA to entertain bids for the janitorial work in the two buildings from a union contractor and terminate its West Bay contract. Further, Respondent, in an October 30 letter to JMA, wrote that the latter had jeopardized Respondent's hopes by failing to award the janitorial contract to a responsible union contractor. Finally, while much of the documentary evidence in these cases, including notices publicizing the picketing and leaflets distributed by the pickets, suggests that Respondent's primary dispute was with JMA because it was subcontracting with West Bay for the janitorial work at 631 Howard and 55 Hawthorne, the fact is that only West Bay employed janitorial employees or was contractually obligated to provide them. JMA nor any building tenants had such employees, and, as stated above, as a matter of law, Respondent had no primary labor dispute with JMA.

that, on November 7, commencing at 3:30 and continuing until 5:30 p.m., approximately 40 individuals, including men wearing baseball caps with ''Local 87'' printed on them, marched in a closed, circular formation, carrying red cloth banners, with the words ''Justice for Janitors'' printed on them and chanting in unison with Linda Kahn, who was shouting into a bullhorn slogans including ''West Bay out,'' ''JMA liars,'' and ''JMA unfair,'' at the main entrance to 55 Hawthorne; and that no West Bay janitors were working inside the building during the course of the demonstration.

The above three complaints allege and counsel for the General Counsel argues that Respondent's picketing on August 3, Hong's threat of picketing on August 24, and Respondent's acts and conduct on November 7 were violative of Section 8(b)(4)(i) and (ii)(B) of the Act. As to the conventional picketing on August 3, I conclude that such was clearly Section 8(b)(4)(i) and (ii) violative conduct. *Atchison, Topeka & Santa Fe Railroad Co*., supra; *J. H. Hogan, Inc*., supra; and *McDevitt & Street Co*., supra. In this regard, unlike the picketing at 49 Stevenson or 1 Ecker the past June, as Respondent sought and obtained strike sanction prior to the picketing and did so with placards, which misleadingly proclaimed that Respondent was on strike against West Bay, and as the picketing was partly conducted at the entrance utilized by construction workers who were probably represented by other labor organizations,[99] it seems certain, and I believe, that not only was the picketing intended to coerce and restrain JMA and the tenants of 631 Howard and 55 Hawthorne, within the meaning of Section 8(b)(4)(ii) of the Act, but also such was meant to induce and encourage employees to refuse to work, within the meaning of Section 8(b)(4)(i) of the Act. Cf. *Burns Detective Agency*, supra. Moreover, notwithstanding Respondent's knowledge of the janitors' work schedule, the picketing occurred at a time when no West Bay or subcontractor janitors were working in either 631 Howard or 55 Hawthorne, and it is well settled that the failure to conform to the *Moore Dry Dock* criteria, such as picketing when no employees of the primary employer are present at the worksite performing their normal job duties, creates a rebuttable presumption of secondary intent for the picketing. *McDevitt & Street Co*., supra at 958; *Thrust IV*, supra, 264 NLRB 628. That said presumption of secondary intent is warranted is buttressed by Respondent's continued practice of publishing and distributing documents, falsely naming JMA as the party with which it was engaged in the primary labor dispute. *NLRB v. Local 77*, supra. With regard to the statements of Hong during his telephone conversation with Attorney Culver on August 24, there can be no doubt that, on behalf of Respondent, he threatened to resume picketing at the two buildings and that the threats were for the proscribed 8(b)(4)(B) objective. Thus, when asked what it would take to prevent a resumption of the picketing, Hong averred that JMA would have to agree to ''go union,'' thereby implying that JMA would have to terminate its West Bay contract. Inasmuch as the broadly stated threat was stated with full knowledge of the reserved gate system and of the exact hours when West Bay janitors would be working, it was Hong's burden to restrict his notice of impending picketing. His failure to do so in light of the proscribed objective renders his threats to JMA's attorney violative of Section 8(b)(4)(ii)(B) of the Act. *Coors Distributing Co*., supra, 268 NLRB 475 (1983); *Huntington Town House*, supra, 225 NLRB 559 (1976).[100] Turning to the November 7 incident, the inescapable fact is that, for 2 hours, approximately 40 individuals patroled in front of the main entrance to 55 Hawthorne, carrying small red flag banners, on which was printed the message ''Justice for Janitors,'' and chanting slogans. One would only hesitate to term this activity picketing due to the absence of message bearing placards, the hallmark of conventional picketing. However, as stated above, the Board has long held that the carrying of placards is not an essential element to denote picketing; rather, the one essential feature is the posting of individuals at entrances to a place of work. *Calcon Construction*, supra, 287 NLRB 570 (1987); *Stoltze Land & Lumber Co*., supra, 156 NLRB 388. Therefore, what occurred in front of the entrance to 55 Hawthorne, on November 7, must be characterized as picketing (and not merely as patroling and signal picketing as alleged in the complaint in Case 20–CC–3174). *Mine Workers District 12 (Truax-Traer Coal Co.)*, 177 NLRB 213, 218 (1969). Moreover, not only, in the circumstances of this case as described above, must Respondent's picketing be found to violate Section 8(b)(4)(i) and (ii) of the Act but also the record evidence manifests the existence of the proscribed 8(b)(4)(B) object. Thus, Roy Hong's statement to attorney Culver, on August 24, establishes that the picketing was designed to force JMA to terminate its business relationship with West Bay in order to enter into an agreement with a union signatory building maintenance contractor and to force the building tenants to pressure JMA to take such action. Confirmation of Respondent's secondary objective is, of course, its failure to comply with the *Moore Dry Dock* evidentiary standards that day. Thus, Respondent engaged in picketing without clearly identifying with whom it was engaged in a primary labor dispute and at a time when no West Bay employees were working in the building. *New Beckley Mining Co*., supra; *McDevitt & Street Co*., supra. Further confirmation of Respondent's proscribed object may be inferred from the myriad documents, falsely naming JMA as the entity with whom Respondent was engaged in the primary labor dispute. *NLRB v. Local 77*, supra. Based on the foregoing, and the record as a whole, I find that, on August 3, Respondent's picketing was in violation of Section 8(b)(4)(i) and (ii)(B) of the Act; that Hong's threat of picketing on August 24 was violative of Section 8(b)(4)(ii)(B) of the Act; and that Respondent's picketing on November 7 was violative of Section 8(b)(4)(i) and (ii)(B) of the Act.

In considering the merits of the complaint in Case 20–CC–3177 and the legality of Respondent's conceded January 1991 picketing at Koret, I note that, based on the uncontroverted record evidence,[101] Respondent had a primary

[99] While there is no record evidence that the picketing caused the construction workers to not report for work, Respondent took credit for that.

[100] Respondent argues, with regard to the alleged threat, that Attorney Culver ''carefully planned and devised to be threatened'' and ''invited'' the threat. I find no merit to this defense. Thus, from all appearances, Roy Hong was an experienced union official and knew exactly what he was saying to Culver. There is no indication that Culver planted the seeds of unlawful conduct in an otherwise innocent mind, and I shall not presume such.

[101] With regard to the picketing at the Koret facility, counsel for the General Counsel presented two witnesses, Richard Partida and

labor dispute with West Bay based on the latter's status as a nonunion building maintenance contractor[102] and that, in furtherance of the dispute, Respondent engaged in the aforementioned picketing at Koret's building. More specifically, in accord with the credited testimony, I find that, having terminated its relationship with a union signatory building maintenance contractor, Koret contracted with West Bay to provide such services at its office building in San Francisco effective January 2, 1992; that Koret employs, at its building, 25 individuals, who produce Koret's sample product line and who are represented by the ILGWU; that, on December 28, Linda Kahn informed Victor Krasney that Respondent would picket at the building and that she could not permit union-cleaned buildings go nonunion and would work with Koret to find a union signatory contractor; that, on January 2, Richard Partida wrote a letter to Respondent in which he stated that West Bay's janitors would not be working during the daytime, would start working each day at 6 p.m., and would only enter the building through the rear entrance (110 Minna); that Koret sent said letter to Respondent by facsimile transmission, and such was received by Respondent; that, later on January 2, Partida told Richard Leung that Koret was within its rights to contract with West Bay, and the latter replied that Respondent would picket at Koret's building and Koret would have problems with the ILGWU ''if you don't reverse your decision''; that, on January 2, Respondent sought and received strike sanctions against Koret from the San Francisco Labor Council and picketed at the front entrance to Koret's building; that, on January 3, Leung warned Partida that, if Koret did not cancel its contract with West Bay and again contract with the union signatory building maintenance contractor, Respondent would continue picketing ''with as many people as it took to get us to change our minds; and that, on January 3, Koret instituted a reserved gate system at its building, reserving the front entrance only for Koret's employees and customers and the rear entrance only for janitorial personnel and deliveries and posting properly worded signs at each entrance. I further find that, on January 4, 7, 8, 10, 11, and 14, in the afternoon of each day and at a time when no janitors employed by West Bay were working at Koret's facility, notwithstanding the reserved gate system in effect at the building, Respondent picketed at the front entrance to the facility with signs reading ''ON STRIKE—LOCAL 87, SEIU'' and ''HUELGA—LOCAL 87''; and that, on January 7, 8, 10, and 11, during the daytime when no janitors, employed by West Bay, were working inside the building, Respondent picketed at the rear entrance to the Koret facility with signs reading ''ON STRIKE—LOCAL 87, SEIU.''

The complaint alleges and counsel for the General Counsel argues that Respondent's above-described picketing at the Koret building was violative of Section 8(b)(4)(i) and (ii)(B) of the Act and that Respondent's threat of picketing was violative of Section 8(b)(4)(ii)(B) of the Act. Initially, there can be no question that the picketing at both entrances was of the type traditionally considered as constituting Section 8(b)(4)(i) and (ii) violative conduct. *Atchison, Topeka & Santa Fe Railroad Co.*, supra; *Interox America*, supra; *J. H. Hogan, Inc.*, supra.[103] Turning to the object of the picketing, without regard to any other considerations, including picketing at the neutral entrance, the timing of the picketing, and the failure to name West Bay on the picket signs—all of which clearly establish the secondary nature of the picketing, it is quite apparent that Respondent's intent was that which is proscribed by Section 8(b)(4)(B) of the Act. Thus, Linda Kahn warned Krasney that Respondent could not permit union-cleaned buildings to go non union and Richard Leung twice blatantly threatened Richard Partida with picketing unless Koret reversed itself by canceling its contract with West Bay, and entering into a new contract with American Building Maintenance, the prior janitorial contractor. Clearly, then, Respondent would only have been satisfied by the cessation of business between Koret and West Bay, and, therefore, Respondent's entire picketing of the Koret building was for the proscribed object and must be found violative of Section 8(b)(4)(i) and (ii)(B) of the Act. *Thrust IV*, supra at 635; *Electrical Workers Local 441 (Rollins Communications)*, 208 NLRB 943 (1974). Finally, as to Richard Leung's above threat of picketing at Koret's office facility if Koret did not reverse its decision to contract with West Bay, and his warning that, in the event of continued picketing, Koret would have problems with the ILGWU, the labor organization which represented Koret's production employees, the secondary nature of the threats is obvious, and Respondent clearly acted in violation of Section 8(b)(4)(ii)(B) of the Act. *Coors Distributing Co.*, supra; *Huntington Town House*, supra.

With regard to the complaint in Case 20–CC–3189, while there exists no dispute that Respondent engaged in demonstrations in front of the entrance to 260 California on May 16, 17, 20, 22, and 23, 1990, and in front of 230 California on May 23, there does exist a dispute as to exactly what occurred during the May 23 incident at 260 California. Initially,

Victor Krasney. The testimony of each was uncontroverted, and each appeared to be an honest and straightforward witness. However, while, I believe, each seemed to be testifying honestly as to his recollection of events, Partida impressed me as having the better recollection, and I shall rely on his version as to what occurred where their respective testimony conflicted. Otherwise, each shall be credited herein.

[102] Notwithstanding the contents of a leaflet and statements by Linda Kahn to Krasney that Respondent's concern was West Bay's status as a ''notorious'' subcontractor to employers who violate child labor laws and other California labor code provisions, the record evidence clearly establishes that Respondent was mainly concerned with West Bay's nonunion status herein. Thus, Kahn wrote to Koret that she could not permit union-cleaned buildings to become nonunion and that she would work with Koret to find a union signatory contractor for its building. That said comment should be viewed as the true characterization of the dispute between the parties is seen from the nearly 5-year dispute between Respondent and West Bay and Respondent's picketing at 1 Ecker and 631 Howard and 55 Hawthorne over West Bay's nonunion status. Accordingly, while subcontractors' labor code violations were important to Respondent, West Bay's nonunion status was of paramount importance and was the basis for the instant labor dispute.

[103] Not only did the Koret picketing coerce and restrain Koret but also it was intended to induce Koret's employees to engage in a work stoppage against Koret. Thus, Koret employs 25 individuals, who are represented by the ILGWU; Richard Leung warned Richard Partida that Koret would have problems with that labor organization; Respondent sought and obtained strike sanctions against Koret; and the Respondent's picket signs merely read ''On Strike.'' In these circumstances, including the location of the picketing at the Koret employee entrance, the issue is free from doubt that the picketing was aimed at Koret's employees.

crediting the respective, uncontroverted testimony of Catherine Carmichael and Richard Barsotti,[104] I find that IMA terminated its contract, covering the building maintenance work at 260 California, with Golden State, a union signatory contractor, on May 14 and entered into an agreement, effective on May 17, for said work with Ali Abdulla, on behalf of Complete, a nonunion entity; that Golden State provided a daytime janitor for 260 California; that, on May 14, IMA sent a letter to Respondent, informing it that, effective on May 17, no day janitor would be present at 260 California; that, on May 15, Respondent sent a series of documents, including a copy of a leaflet, exhorting tenants of 260 California to protest IMA's decision to use a nonunion janitorial contractor, and a copy of a letter, requesting strike sanctions against IMA from the San Francisco Labor Council, to IMA; that, on May 16, for approximately 2 hours between 11:30 a.m. and 1:30 p.m., a group of 10 to 20 individuals, who carried small, red ''Justice for Janitors—SEIU Local 87'' flags and chanted in unison with a person shouting into a bullhorn, marched in a closed circular formation in front of the entrance to 260 California; that, during the demonstration, individuals distributed leaflets, entitled ''IMA COMMERCIAL PROPERTIES UNFAIR'' and which stated that IMA had taken jobs from janitors by terminating its union contract and that Respondent was protesting against said ''heartless action''; that, on May 17, 260 California tenants discovered copies of Respondent's leaflet, which requested their protests to IMA concerning its decision to utilize a nonunion janitorial contractor, and, at approximately noontime, a group of from 7 to 10 individuals, waving the small, red ''Justice for Janitors'' flags and making noise, commenced marching, in the same circular formation as on the day before, at the entrance to 260 California; and that similar demonstrations, consisting of between 15 and 20 individuals marching in a closed circular formation while carrying the small, red flags, and chanting in unison with a person shouting into a bullhorn, occurred during the afternoons of March 20 and 22 at the entrance to 260 California.

As stated above, there is no dispute that, on May 23, a group of 15 to 20 demonstrators, including Roy Hong and Robert Daniels, a business agent for Respondent, gathered in front of the entrance to 260 California, blowing whistles, waving the red flags, and being extremely loud. As to what happened next, I credit the respective testimony of Carmichael and building security guard Zelaya, both of whom appeared to be testifying frankly and honestly, over that of Daniels, whose demeanor was that of a mendacious witness. My impressions in these regards were confirmed by perusal of the 260 California Street visitors logsheets for May 23, 1991, on which neither signatures of individuals visiting Neil DeMasters nor those of the individuals mentioned by Daniels appear, and by the fact that the tactics of the demonstrators, as described by Carmichael and Zelaya, were identical to those employed later at 49 Stevenson and at 25 Ecker. Accordingly, I find that, after milling about outside the front doors, the 15 to 20 demonstrators ''rushed'' into the lobby, blowing on whistles and chanting loudly; that they then boarded waiting elevators and went up to the eighth floor to Neil DeMasters' office; that, after a while, the group left the building and walked to in front of the foyer entrance of 230 California where they proceeded to march in a circular formation, blowing on whistles, chanting loudly, and waving the red flags.

The complaint alleges and counsel for the General Counsel argues that the foregoing constitutes conduct violative of Section 8(b)(4)(i) and (ii)(B) of the Act. In this regard, what occurred is similar to that which occurred at the front entrance of 55 Hawthorne on November 7, 1990. Thus, on each of the above dates, a large group of individuals patrolled outside the front entrance of 260 California, carrying message-bearing flags, and, on May 23, a large group patrolled outside the entrance to 230 California with the sane flags. While the demonstrators never carried conventional placards, the foregoing conduct, occurring at the entrances to the two buildings, clearly constituted picketing, and I so find. *Calcon Construction*, supra; *Truax-Traer Coal Co*., supra; *Stoltze Land & Lumber Co*., supra. Moreover, as with the picketing at 55 Hawthorne on November 7, given that Respondent sought strike sanctions against 260 California Street, thereby, attempting to reach the employees of tenants in the building, it is patently obvious that the instant picketing was intended to induce and encourage employees of tenants to strike in violation of Section 8(b)(4)(i) as well as to coerce and restrain the tenants of both 260 California and 230 California in violation of Section 8(b)(4)(ii) of the Act. Cf. *Burns Detective Agency*, supra. Furthermore, the boisterous invasion of 260 California Street, on May 23, must be viewed in the context of the totality of Respondent's conduct as constituting an additional act of restraint and coercion. *Retail Wholesale Union District 65 (B. Brown Associates)*, 157 NLRB 615, 616 fn. 1 (1966).

I have demonstrated above that Respondent's primary labor dispute, in each of the consolidated cases, as a matter of law and fact, was with the nonunion building maintenance contractor, in the instant matter—Complete. Further, as the record evidence herein establishes, said primary labor dispute resulted directly from Complete's nonunion status. Utilizing the *Moore Dry Dock* evidentiary criteria for determining whether picketing at a common situs was for a proscribed secondary objective, the inevitable conclusion would appear to be that Respondent's picketing at 260 California and at 230 California was unlawfully secondary in nature. Thus, at no time during the picketing at either location, did Respondent name Complete as the entity with which it was engaged in a primary labor dispute. *Goold Electric*, supra, 297 NLRB 1050 (1991); *Stay-King Maintenance*, supra, 279 NLRB 168 (1986). Moreover, at least 3 days of picketing occurred at 260 California at times, Respondent was aware, when no janitors were working in the building. *McDevitt & Street Co*., supra; *Thrust IV*, supra.

Notwithstanding the lack of conformity with three of the four *Moore Dry Dock* criteria, Respondent argues that Ali Abdulla is an employee of IMA rather than an independent contractor and, in the alternative, that Complete and IMA constitute joint employers of the janitors at 260 California

[104] While each impressed me as testifying honestly as to his or her recollection of the picketing, Barsotti and Carmichael contradicted each other as to the time of the May 16 demonstration in front of 260 California, with the latter stating that such occurred at approximately noontime and the former stating that it occurred in the late afternoon. Given that G.C. Exh. 85(e), a leaflet published by Respondent, scheduled a ''rally'' for noontime on May 16 at 260 California, I shall credit Carmichael as to the timing of the demonstration. Otherwise, the testimony of each was corroborative.

and 230 California, and that, accordingly, IMA properly must be considered a primary disputant in any labor dispute between Respondent and Complete. At the outset, in this regard, I note that the record evidence on these points consists only of the building maintenance contract between IMA and Complete and the testimony of Ali Abdulla and that of Richard Barsotti and that in considering whether an individual is an employee or an independent contractor, the Board utilizes a ''right of control'' test, pursuant to which ''if the person for whom the services are performed retains the right to control the manner and means by which the results are to be accomplished, the person who performs the services is an employee. If only the results are controlled, the person who performs the services is an independent contractor.'' *Fort Wayne Newspapers*, 263 NLRB 854, 855 (1982); *Herald Star*, 227 NLRB 505, 507 (1976). Among the factors to be considered are whether the work is an essential part of the company's normal operations; whether there exists a permanent working arrangement; whether the individual does work in the company's name with the latter's assistance and guidance; whether the parties' working agreement is promulgated by and changed independently by the company; whether the individual must account to the company for funds under a regular reporting procedure; whether the parties' contract requires certain skills; whether the individual has a proprietary interest in the work he performs; and whether the individual has the opportunity to take risks which may result in profit or loss. *Gary Enterprises*, 300 NLRB 1111, 1112 (1990); *Standard Oil Co.*, 230 NLRB 967, 968 (1977). Respondent asserts that the relationship between IMA and Ali Abdulla was that of employer-employee and, in support, argues that Complete would not exist but for the relationship between IMA and Abdulla, that Complete has no separate physical existence separate from IMA, that Complete's janitorial services are an integral part of IMA's leasing responsibilities, that the agreement between Complete and IMA permits the former to retain control over the parties' contract and to unilaterally dictate the terms, and that IMA retains a right to control the manner and means of Complete's job performance.

While Ali Abdulla hires and fires the helpers, who assist him in performing the janitorial work in the IMA managed commercial office buildings, establishes their wage rates, and grants them time off, I find merit in Respondent's contention that the business relationship between IMA and Abdulla is akin to that of employer and employee. Thus, Abdulla performs commercial office building janitorial work only for IMA, and, as IMA's lease agreements require it to provide janitor service for the tenants at 260 California, Abdulla's work is integral to IMA's business operations. Next, clearly militating against a finding of any proprietary interest by Abdulla in his work, is the fact that, apparently with his assent, IMA retains complete control over the contractual relationship between itself and Abdulla for 260 California. Thus, the parties' contract is an IMA purchase order form and incorporates all of the terms of the purchase order, including the requirement that Abdulla must maintain sufficient and accurate records of all costs incurred as such form the basis for compensation. Also, the language of the ''contract'' was entirely drafted by IMA, and not only was Abdulla not present during the drafting but also he was never even consulted as to the language. Further, that said agreement was promulgated by Respondent for its own benefit and to the detriment of Abdulla may be seen from the origin of the vacation provision, by which IMA disclaimed responsibility for paying for vacations for Abdulla's employees. In that regard, I credit Abdulla's admission that he was unaware of the existence of such a provision in the contract. Next, and equally as significant a factor for my conclusion that an employer-employee relationship exists between IMA and Abdulla, is the three-page addendum, to the ''contract,'' of daily, weekly, monthly and quarterly job duties, and I specifically credit Barsotti[105] that IMA developed the scope of services without any input from Abdulla. As to the contents of the document, even a most cursory examination discloses that, not merely setting forth the schedule for work to be accomplished, the listing of job tasks includes specific instructions as to the manner and means by which they should be accomplished. For example, dusting must be with a ''treated cloth,'' fingerprints and the like must be removed from glass surfaces with ''a non-abrasive cleaner,'' bathroom urinals and toilet bowls must be cleaned with only ''approved germicidal solutions,'' and ''disinfectant'' solutions must be used to clean bathroom toilet seats and floors. In my view, the substantial degree of control over Abdulla's work evidenced by the foregoing and the lack of even a minimum amount of latitude allowed to Abdulla for the exercise of independent judgment are inimical to a finding of independent contractor status. Further illustrative of IMA's degree of control over Abdulla's work are the communications from Carmichael, regarding work not completed to her satisfaction, which, Abdulla admitted, numbered in the ''hundreds.'' Moreover, Abdulla admitted that IMA has the contractual right to terminate the agreement with 3 days' notice if he fails to perform assigned tasks. Finally, the nature of Abdulla's overall relationship with IMA, including his lack of past business skills and obvious communicative difficulties, suggests that he does not exercise any of the normal entrepreneurial functions associated with an independent contractor, including the taking of risks which may result in profit or loss. In these circumstances, I find that IMA has a right to control the manner and means by which Ali Abdulla performs his tasks; that the business relationship between IMA and Abdulla, doing business as Complete, is, in effect, an employer-employee relationship; and that, therefore, IMA must be considered as being a primary disputant herein. See *Teamsters Local 363 (Roslyn Americana Corp.)*, 214 NLRB 868 (1974).[106] Accordingly, Respondent's picketing and other conduct at the IMA managed buildings, 260 California and 230 California, as advertised in its leaflets, must be considered as having been in pursuit of a primary labor dispute with IMA and, therefore, not violative of Section 8(b)(4)(i) and (ii)(B) of the Act. Based on the

[105] Abdulla, of course blatantly contradicted Barsotti as to the origin of the addendum language. As I do not believe the contradiction resulted from any language deficiency but rather from his deliberate attempt to evade the truth and as I did not perceive his demeanor as being compatible with honesty, I can not accept Abdulla's assertion that he created the addendum language.

[106] I, of course, realize that the cited Board decision deals with a joint employer relationship; however, as herein, the focus was on the status of an alleged ''neutral,'' and I believe the same result must attain.

foregoing and the record as a whole, I shall recommend that the complaint in Case 20–CC–3189 be dismissed.

Turning to the complaint in Case 20–CC–3190, the uncontroverted record evidence[107] is that, continuing its campaign against Trinity, based on its status as a nonunion building maintenance contractor,[108] Respondent threatened to picket at 394 Pacific and acted on its threat by picketing at 49 Stevenson. More specifically, I find that, notwithstanding its warning to make 394 Pacific the center of its continuing campaign against the nonunion Trinity, approximately 15 to 20 individuals, on behalf of Respondent, gathered at the front entrance to 49 Stevenson on June 19 at approximately 12:15 p.m.;[109] that, carrying small, red banners, bearing the message ''Justice for Janitors,'' and chanting slogans, such as ''Down with NAMCO,'' in unison with a person shouting into a bullhorn, Respondent's supporters commenced marching in a 20 foot wide circle in front of the entrance; that some of the marchers distributed a handbill, stating that Martin Zankel and the other owners of 394 Pacific contracted with NAMCO to manage 394 Pacific, that NAMCO had terminated a union signatory janitorial contractor and had hired a nonunion one, and that ''We intend to stop this immoral and unjust attack''; and that, after several minutes of marching, the demonstrators entered the lobby, continued to chant loudly and in unison with the man using the bullhorn, and ignored the building security guard's demand that they leave the lobby; and that most of the demonstrators boarded the building's freight elevator, and proceeded to go to three upper floors. I further find that, at all times material herein, construction remodeling work was being performed on the exterior walls and lobby at 394 Pacific; that, on June 27, 12 days after Trinity began providing janitorial services at 394 Pacific, Zankel received a letter from Roy Hong with two attachments—one being a letter to the San Francisco Labor Council requesting strike sanctions so that Respondent would be enabled to commence picketing at 394 Pacific and the other a letter advising of the granting of said sanctions; and that Hong's letter warned Zankel that, ''in case you don't know what [the seeking and granting of strike sanctions] exactly means, you most likely won't get your building fixed up on time.'' Also, I find that, while no picketing ever occurred at 394 Pacific, on August 1 at 4 p.m., approximately 50 demonstrators, concededly at Respondent's direction, appeared at 49 Stevenson; that, carrying red flags on which was printed ''Justice for Janitors—Local 87'' and chanting in unison with an individual shouting into a bullhorn, the demonstrators, at first, milled about in the entrance area, positioning their feet and bodies so that the front doors could not be closed and, later, marched in a circular formation in front of the entrance area. Finally, I find that, on August 6 at approximately noontime, a large crowd of approximately 100 people marched toward 49 Stevenson, with many carrying ordinary picket signs reading ''Strike FDIC, 25 Ecker, Local 87''; that, as the crowd arrived at the building, at least half of the pickets left the street, moved inside the building's arcade area, waving signs and chanting slogans, including ''shut it down, shut it down,'' and remained in that area for no more than 3 to 5 minutes before rejoining the group and marching toward Ecker Street; that, an hour later, the crowd of 100 pickets again marched toward 49 Stevenson—this time from the direction of Ecker street; that, again, approximately half of the pickets, left the street and moved beneath the arcade area, chanting the same slogans and waving their signs, and, after a minute or two, rejoined the crowd, and walked away toward Second Street.

The complaint alleges and counsel for the General Counsel argues that Respondent's foregoing threat and conduct were violative of Section 8(b)(4)(i) and (ii)(B) of the Act. Initially, as to the threat to alleged threat to picket, there can be no doubt that the reference, in Hong's letter, to the building not being ''fixed'' on time, in conjunction with the attached letter seeking strike sanctions in order to picket at 394 Pacific, constituted a direct threat, to Martin Zankel, of picketing at that building, with the sanctions and picketing designed to induce or encourage the employees of the construction companies and coerce and restrain the contractors themselves. Moreover, I believe the secondary objectives of the threat are obvious—forcing the construction companies to cease doing business with 394 Associates which, in turn, would force or require 394 Associates to pressure NAMCO into terminating its building maintenance contract with Trinity. Accordingly, the threat to Zankel was clearly violative of Section 8(b)(4)(ii)(B) of the Act. *Huntington Town House*, supra.

With regard to what occurred on June 19 and August 1 at 49 Stevenson, the conduct of the demonstrators, for which Respondent conceded responsibility, in front of the entrance to the building (patrolling, carrying the red flag banners and chanting slogans), as with the conduct in front of 55 Hawthorne on November 7, 1990, and that which occurred in front of 260 California on May 16 through 23 and in front of 230 California on May 23, notwithstanding that none of the demonstrators carried placards, must be considered as constituting picketing, and I so find. *Calcon Construction*, supra; *Truax-Traer Coal Co*., supra; *Stoltze Land & Lumber Co*., supra. Furthermore, the June 19 invasion of the building by the demonstrators and the confrontational nature of what occurred inside the lobby, occurring in connection with the picketing, and the August 1 milling around inside the entrance area and the conduct in the doorway must likewise be

[107] Testifying on behalf of the General Counsel, regarding the allegations of this complaint, were Martin Zankel, Navaid Choudhary, John Lathrop, and Meredith Suter. Not only was the testimony of each uncontroverted but also each appeared to be an honest and truthful witness and is credited herein.

[108] That Trinity is the primary disputant and that Respondent remained concerned with Trinity's nonunion status is clear from the record evidence. Thus, the record establishes that the 394 Associates, which had contracted with a union signatory building maintenance contractor, contracted with NAMCO, on or about June 15, 1991, to manage 394 Pacific; that NAMCO in turn, contracted with Trinity to perform the building maintenance functions; that Roy Hong wrote to NAMCO, advising the latter it was aware NAMCO was planning to utilize a nonunion janitorial contractor in that building; that Hong also wrote to Martin Zankel, advising him that a nonunion janitor would be working at 394 Pacific Trinity and warning that ''[Respondent] has been campaigning against Trinity throughout downtown, San Francisco for more than a year, and as a result of NAMCO's decision, your building will be the center of our campaign.''

[109] The daytime janitor position had been reinstated at 49 Stevenson in July 1990, and this continued during the instant acts and conduct. Recognizing that there was some conflicting testimony, as I believe that Meredith Suter was the more reliable witness with regard to the janitors' work schedule during June and August 1991, I find that the hours for the day janitor were from approximately 7 until 10 in the morning and from approximately 2 until 3 in the afternoon.

considered coercive conduct within the meaning of Section 8(b)(4)(ii) of the Act. *B. Brown Associates*, supra. Finally, notwithstanding that each lasted for only a few minutes, the demonstrations on August 6, with the individuals involved carrying placards in front of 49 Stevenson, were nothing less than episodes of conventional picketing and, of course, 8(b)(4)(i) and (ii) violative conduct. *McDevitt & Street Co*., supra.[110] As to whether or not Respondent's picketing[111] and other coercive misconduct, at 49 Stevenson, was intended for a proscribed object, the record evidence, including the handbill distributed on June 19, convinces me that what occurred at that building was, in reality, an blatant aspect of Respondent's campaign to force 394 Associates and the 49 Stevenson tenants to pressure NAMCO and to force NAMCO to cease doing business with Trinity both at 394 Pacific and at 49 Stevenson. That this is true can be seen from the handbill, which falsely casts responsibility for the picketing on 394 Associates and NAMCO and which never identified Trinity as the primary disputant. *Service Employees Local 77*, supra; *Pacific Telephone*, supra. Moreover, it is apparent that Respondent never conformed to the *Moore Dry Dock* evidentiary standards. Thus, the picketing occurred at times when the day janitor was not scheduled for work at 49 Stevenson, and there is no evidence that, during Respondent's acts, the janitor was in the building, performing his normal job duties, and Respondent never identified Trinity as the primary disputant. *Goold Electric*, supra, 297 NLRB 1050 (1991); *Ready Mixed Concrete*, 200 NLRB 253 (1972). Accordingly, I find that, by its acts and conduct on June 19 and August 1, Respondent engaged in violations of Section 8(b)(4(ii)(B) of the Act and, by its picketing on August 6, engaged in acts and conduct violative of Section 8(b)(4)(i) and (ii)(B) of the Act.

Finally, with regard to the complaint in Case 20–CC–3196, the uncontroverted record evidence[112] is that, based on a primary labor dispute with GMG,[113] based on its status as a nonunion building maintenance contractor,[114] as the culmination of its campaign against nonunion building maintenance contractors and the commercial office building owners and managers who utilized their services, Respondent engaged in acts and conduct, for which it conceded responsibility, at 25 Ecker. More specifically, I find that, on behalf of the owners association, Brighton Pacific terminated its janitorial services contract with union signatory ISS and entered into a contract with nonunion GMG to become effective on August 1, 1990; that the GMG janitors were scheduled for work at 25 Ecker from 7 p.m. until 4 am each day; that, on July 30, at approximately 3 p.m., a demonstration occurred in the plaza, in front of the building, with a crowd of, at least, 50 people marching in a circular formation, carrying the small, red cloth ''Justice for Janitors—Local 87'' banners and loudly chanting slogans in unison with a man shouting into a bullhorn; that, after the man, with the bullhorn, shouted that they should enter the building, the crowd surged toward the front doors, with one of the demonstrators charging into an FDIC employee, Everett Woldridge, and pressing him against one of the glass doors and another demonstrator splashing him with a red liquid; and that approximately 35

[110] Unlike the June 19 and August 1 picketing and other coercive acts at 49 Stevenson, which, based on my findings and conclusions for the 1990 picketing there, I do not believe were directed at employees, I do believe that the August 6 picketing was directed at the employees of tenants as well as at the tenants themselves. Thus, the pickets' slogans, including ''Shut it down, shut it down'' and their placards, which contained the false message, ''On Strike,'' convince me that their conduct was intended to induce and encourage the employees of the 49 Stevenson tenants to engage in a work stoppage or strike, within the meaning of Sec. 8(b)(4)(i) of the Act.

[111] Respondent disclaims responsibility for that which occurred on August 6. However, Respondent admitted responsibility for the picketing at 25 Ecker, which occurred between the incidents at 49 Stevenson, and there can be no doubt that the crowd of pickets, from which those who picketed at 49 Stevenson broke off, was on its way to 25 Ecker, located a little more than a block away. Respondent's assertion is without merit as a labor organization is responsible for the acts of its authorized pickets ''even if not specifically authorized or indeed specifically forbidden.'' *Avis Rent-A-Car*, supra.

[112] The respective testimony of the witnesses, who testified on behalf of the General Counsel (John Schmidt, Everett Woldridge, Timothy Tanner) was uncontroverted, and each appeared to be honest and candid while testifying. Accordingly, each shall be credited herein.

[113] Respondent's defense to its conduct at 25 Ecker is similar to its defense to the allegations, regarding its conduct at 260 California and 230 California—that Brighton Pacific and GMG are joint employers of the janitors at 25 Ecker and, therefore, the former is, in reality, a primary disputant herein. In this regard, in order to determine whether separate businesses constitute joint employers, the Board must decide if the said employers ''share or co-determine those matters governing the essential terms and conditions of employment.'' *Whitewood Oriental Maintenance Co*., 292 NLRB 1159, 1161 (1989); *O. Voorhees Painting Co*., 275 NLRB 779, 780 (1985). In analyzing alleged joint employer cases, evidence of control over five areas is ''particularly relevant:'' hiring and firing, discipline, wages and insurance, supervision, and participation in the collective-bargaining process. *Whitehead Maintenance*, supra at 1161 fn. 8. Herein, Respondent initially argues that Brighton Pacific retains the right to review the performance of the GMG janitors, and there is record evidence that, each day, John Schmidt checks the previous night's janitorial work. However, the record also establishes that GMG provides its own supervisor, who directs the work of the janitorial crew each night, and that Schmidt does not monitor their work. Further, while Schmidt has the right to ask a janitor to perform a contractually obligated task, such seems to be ''in the nature of routine directions of what tasks [are] required'' and not evidence of direct supervision. *Southern California Gas Co*., 302 NLRB 456, 461 (1991). Respondent next argues that, while there is no evidence that Schmidt has any authority over the hiring of janitors, he did state that he has the right to request that a janitor be replaced and that Brighton Pacific's ultimate sanction, if GMG refuses his request, is not to renew the building maintenance contract. However, Brighton Pacific's right, in this regard, merely is that of an owner or occupant protecting his premises and not that of a joint employer. Id. *Hychem Constructors*, 169 NLRB 274, 276 (1968). There is no record evidence establishing any other indicia of control, by Brighton Pacific, over the janitors' terms and conditions of employment, and, therefore, I find no merit to Respondent's assertion that Brighton Pacific and GMG constitute joint employers of the janitors so as to make the former a primary disputant herein. Further, for the same reasons, I find no merit to the contention that there exits some intimate relation between them so as to deny Brighton Pacific the status of a neutral herein.

[114] That GMG's nonunion status was the underlying rationale for Respondent's acts and conduct at 25 Ecker seems certain. Thus, prior to the effective date of the contract with GMG, Roy Hong telephoned Schmidt and said he was aware that Brighton Pacific was going to replace the union signatory ISS with the nonunion GMG and, subsequently, Richard Leung asked if something could be done to retain a union-signatory contractor.

of the demonstrators entered the building lobby, waving their red banners and making a great deal of noise. I further find that, on July 31 at 3:30 p.m., another demonstration occurred inside the plaza area at 25 Ecker, with 40 to 50 people, who were bunched closely and carried the red ''Justice for Janitors—Local 87'' banners, marching in a circular formation; that, after a while, the crowd massed in front of the glass entry doors, effectively blocking ingress to and egress from the building; and that, after 10 minutes, the crowd resumed its marching inside the plaza. Also, I find that, on August 1, from 3:30 until 5:30 p.m., a similar demonstration occurred in the plaza area; that Roy Hong would periodically countdown to when the crowd should enter the building; and that, after one such countdown, approximately 20 demonstrators did rush into the building, marching and chanting inside the lobby. I find that, on August 6, 4 days after Brighton Pacific had hand-delivered, to it, a letter, setting forth the hours that the GMG janitors worked at the building, Respondent's final, and most massive demonstration, at 25 Ecker, occurred shortly before noontime;[115] that an estimated 250 people, with some carrying the red cloth ''Justice for Janitors—Local 87'' banners and others carrying standard picket signs reading ''FDIC, 25 Ecker, On Strike, Local 87,'' bunched tightly together and side-by-side, marched in the same circular path as on the previous days; that, after marching for half an hour, the entire crowd massed in front of the glass atrium, pressing up against the glass, along the entire front of the building, loudly shouted slogans, such as ''We'll shut it down,'' and blocked ingress and egress; that, after a few minutes, the crowd moved away from the atrium walls and resumed marching inside the plaza.

The complaint alleges, and counsel for the General Counsel argues, that the aforementioned acts and conduct were violative of Section 8(b)(4)(i) and (ii)(B) of the Act. I have previously concluded that, notwithstanding the absence of conventional picket signs, the massed patrolling at the front entrances to the various commercial office buildings herein constituted picketing, and, accordingly, I conclude that, by having large numbers of people march inside the 25 Ecker plaza in front of the entrance doors on July 30 through August 1, Respondent engaged in picketing on those days. *Calcon Construction*, supra; *Truax-Traer Coal Co.*, supra, 177 NLRB 213 (1969); *Stoltze Land & Lumber Co.*, supra, 156 NLRB 388. Furthermore, the trespassory entries into the building on July 30 and August 1, accompanied by the marching and shouting, and the massed blocking of ingress and egress on July 31, occurring in conjunction with the picketing those days, were equally and obviously likewise coercive and violative of Section 8(b)(4)(ii) of the Act. *B. Brown Associates*, supra.[116] As to the massive August 6 demonstration, and as to the July 31 demonstration, it is clear that mass picketing and the blocking of ingress to and egress from a building constitute coercive conduct, violative of the Act. *Carpenters District Council of Philadelphia (Reeves, Inc.)*, 281 NLRB 493 fn. 3 (1986). Moreover, what occurred that day is remarkably similar to that which occurred in *C.D.G., Inc.*, supra, 305 NLRB 298 (1991). Therein, for approximately 30 minutes, between 300 and 400 members of a labor organization, which sought to force a company to cease doing business with another unless the latter used its members at area standard wages, encircled a building, carrying picket signs, marching, and blocking all entrances. The Board concluded that such conduct constituted restraint and coercion within the meaning of Section 8(b)(4)(ii) of the Act. Id. at 298. In the instant circumstances, given the massive size of the demonstration and the picketing, the convergence of the crowd in front of the atrium walls and blockage of the entrance doors, and the placards, the same result attain herein, and I so conclude.[117] With regard to evidence of the 8(b)(4)(B) proscribed cease doing business object, it is clear that, by failing to identify GMG as the primary disputant during its demonstrations on July 30 through August 1, Respondent failed to conform an aspect of the *Moore Dry Dock* evidentiary criteria. *Goold Electric*, supra. As stated above, the failure to act in conformity with just one of the criteria is sufficient to establish a rebuttable presumption of a secondary objective for picketing. In these circumstances, that such a conclusion is correct may be seen from consideration of Respondent's August 6 picketing. Thus, notwithstanding being placed on notice that no GMG janitors would be working during the daytime hours, Respondent's picketing occurred at approximately noontime, thereby violating two other *Moore Dry Dock* tenets. *McDevitt & Street Co.*, supra; *Thrust IV*, supra, 264 NLRB 628. Moreover, not only did the picket signs fail to identify GMG as the primary disputant, they did name the FDIC, thereby misleading tenants, their employees, and the public as to the nature of the dispute. *Service Employees Local 77*, supra. Accordingly, based on the record as a whole, as Respondent's obvious aim was forcing the 25 Ecker tenants to pressure Brighton Pacific and forcing Brighton Pacific to cease doing business with GMG, I find that, on July 30 and 31 and August 1, Respondent's picketing and other acts at 25 Ecker were violative of Section 8(b)(4)(ii)(B) of the Act and that, on August 6, its picketing at 25 Ecker was violative of Section 8(b)(4)(i) and (ii)(B) of the Act.

CONCLUSIONS OF LAW

1. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

2. 49 Stevenson Corporation and NAMCO are employers engaged in commerce or in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

[115] The record warrants the inference, from the timing and manner of the demonstration, that the demonstrators were the same ones who appeared at 49 Stevenson that day. Obviously, they stopped at the latter location to and from 49 Stevenson—a sort of ''double header'' demonstration.

[116] Inasmuch as no building employees are represented by any labor organization and as no strike sanctions were sought, I do not believe that the picketing on July 30 through August 1 was directed at employees so as to constitute 8(b)(4)(i) violative conduct. My conclusion is not affected by the obvious assault on FDIC employee Woldridge. Thus, there is no evidence to suggest that any of the demonstrators knew he was a worker in the building; rather, it appears as if he was an innocent victim of Respondent's coercive conduct that day.

[117] As with the picketing at 49 Stevenson the same day, I believe the picketing, at 25 Ecker, constituted (i) violative conduct, as well. Thus, the picket signs read ''On Strike'' and the pickets chanted, ''We'll shut it down,'' and I agree with counsel for the General Counsel's argument that such constitute efforts to induce or encourage employees to engage in a work stoppage.

3. West Bay is a person and an employer engaged in commerce or in an industry affecting commerce within the meaning of Section 2(1), (2), (6), and (7) of the Act.

4. Sakti International is an employer engaged in commerce or in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

5. 230 California Associates in an employer engaged in commerce or in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

6. 394 Associates is a person and an employer engaged in commerce or in an industry affecting commerce within the meaning of Section 2(1), (2), (6), and (7) of the Act.

7. The FDIC is a person and an employer engaged in commerce or in an industry affecting commerce within the meaning of Section 2(1), (2), (6), and (7) of the Act.

8. (a) NAMCO, Constructa U.S., Data Vision, Combs and Greenley, Yank Sing Restaurant, the other 49 Stevenson tenants, and Trinity are persons engaged in commerce or in an industry affecting commerce within the meaning of Section 2(1), (6), and (7) and Section 8(b)(4)(ii)(B) of the Act.

(b) By picketing, several days each week during the first 3 weeks of June, 1990, at 49 Stevenson, without identifying Trinity as the primary disputant, at times when no janitors employed by Trinity or by its subcontractor were working inside the building, and when falsely casting responsibility for its conduct on NAMCO, Respondent engaged in conduct violative of Section 8(b)(4(ii)(B) of the Act.

9. (a) The Copy Shop, Grafika, Golden Gate University Book Store, Gallelli Real Estate, San Francisco Education Fund, the Coro Foundation, the California Appellant Project, and the other 1 Ecker tenants are persons engaged in commerce or in an industry affecting commerce within the meaning of Section 2(1), (6), and (7) and Section 8(b)(4)(ii)(B) of the Act.

(b) By picketing, on June 14, 1990, at 1 Ecker, without identifying West Bay as the primary disputant and at a time when no janitors employed by West Bay or by its subcontractor were working inside the building, Respondent engaged in conduct violative of Section 8(b)(4)(ii)(B) of the Act.

(c) By its confrontational and coercive acts, akin to picketing, on July 9, 1990, at 1 Ecker, without identifying the primary disputant and at a time when no janitors employed by West Bay or by its subcontractor were working inside the building, Respondent engaged in conduct violative of Section 8(b)(4)(ii)(B) of the Act.

10. (a) JMA, PC Computer Rental, the American Diabetes Society, the Leukemia Society, the Bank of America, The Copy Station, the Tan Cafe, and the other 55 Hawthorne and 631 Howard tenants are persons engaged in commerce or in an industry affecting commerce within the meaning of Section 2(1), (6), and (7) and Section 8(B)(4)(i) and (ii)(B) of the Act.

(b) By picketing, on August 3, 1990, at 631 Howard and 55 Hawthorne, at a time when no janitors employed by West Bay or by its subcontractor were working inside the buildings and when falsely casting responsibility for its conduct on JMA, Respondent engaged in conduct violative of Section 8(b)(4)(i) and (ii)(B) of the Act.

(c) On August 24, 1990, by threatening to picket at all entrances to 55 Hawthorne and 631 Howard, notwithstanding knowledge of the existence of a reserved gate system, and at a time when no janitors employed by West Bay or by its subcontractor would by working inside the building, despite knowledge of the janitors' hours of work, Respondent engaged in conduct violative of Section 8(b)(4)(ii)(B) of the Act.

(d) By picketing, on November 7, 1990, at 55 Hawthorne, at a time when no janitors employed by West Bay or by its subcontractor were working inside the building, without identifying West Bay as the primary disputant, and when falsely casting responsibility for its conduct on JMA, Respondent engaged in conduct violative of Section 8(b)(4)(i) and (ii)(B) of the Act.

11. (a) Koret is a person engaged in commerce or in an industry affecting commerce within the meaning of Section 2(1), (6), and (7) and Section 8(b)(4)(i) and (ii)(B) of the Act.

(b) By picketing, on January 4, 7, 8, 10, and 14, 1991, at all entrances to the Koret building, Respondent engaged in conduct violative of Section 8(b)(4)(i) and (ii)(B) of the Act.

(c) On January 2 and 3, 1991, by threatening to picket at the Koret building unless Koret reversed its decision regarding contracting with West Bay and stating that such picketing would result in problems with the labor organization representing Koret's production personnel, Respondent engaged in conduct violative of Section 8(b)(4)(ii)(B) of the Act.

12. On June 27, 1991, by threatening to picket at 394 Pacific, in conjunction with the seeking of strike sanctions and a warning that construction work on the building would be delayed, Respondent engaged in conduct violative of Section 8(b)(4)(ii)(B) of the Act.

13. (a) Kvaerner Hydropower, McCord Co., DataVision, Travel Age West Magazine, and the other 49 Stevenson tenants are persons engaged in commerce or in an industry affecting commerce within the meaning of Section 2(1), (6), and (7) and Section 8(b)(4)(i) and (ii)(B) of the Act.

(b) By picketing, on June 19 and August 1, 1991, at 49 Stevenson, at times when no janitors employed by Trinity or by its subcontractor were working inside the building, without identifying Trinity as the primary disputant, and when falsely casting responsibility for its conduct on NAMCO and 394 Associates, Respondent engaged in conduct violative of Section 8(b)(4)(ii)(B) of the Act.

(c) By picketing, on August 6, 1991, at 49 Stevenson, at times when no janitors employed by Trinity or by its subcontractor were scheduled to work inside the building, without identifying Trinity as the primary disputant, when falsely casting responsibility for its conduct on NAMCO, 394 Associates, and FDIC, and with picket signs bearing the message ''On Strike,'' Respondent engaged in conduct violative of Section 8(b)(4)(i) and (ii)(B) of the Act.

14. (a) Brighton Pacific and GMG are persons engaged in commerce or in an industry affecting commerce within the meaning of Section 2(1), (6), and (7) and Section 8(b)(4)(i) and (ii)(B) of the Act.

(b) By picketing, on July 30 and 31 and August 1, 1991, at 25 Ecker, without identifying GMG as the primary disputant, Respondent engaged in conduct, violative of Section 8(b)(4)(ii)(B) of the Act.

(c) By picketing, on August 6, at 25 Ecker, at times when no janitors employed by GMG were working inside the building, without identifying GMG as the primary disputant, when falsely accusing FDIC as being the primary disputant,

and with picket signs carrying the misleading legend ''On Strike,'' Respondent engaged in conduct, violative of Section 8(b)(4)(i) and (ii)(B) of the Act.

15. The aforementioned unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

16. Unless specifically found, Respondent engaged in no other unfair labor practices.

REMEDY

Having found that Respondent engaged in a series of acts and conduct, violative of Section 8(b)(4)(i) and (ii)(B) of the Act, I shall recommend that it be ordered to cease and desist therefrom and that it take such affirmative action as will effectuate the purposes and policies of the Act. In this regard, counsel for the General Counsel seeks a broad order, enjoining Respondent from engaging in future secondary activity proscribed by Section 8(b)(4)(B) of the Act, as the appropriate remedy herein. I agree. At the outset, it is well settled Board law that a broadly worded cease-and-desist order is warranted only if a respondent is demonstrated to have a ''proclivity'' to violate the Act or if a respondent has engaged in ''such egregious or widespread misconduct so as to demonstrate a general disregard for . . . fundamental statutory rights.'' *Iron Workers Local 378 (N.E. Carlson Construction)*, 302 NLRB 200 (1991); *Hickmott Foods*, 242 NLRB 1357 (1979). Utilizing the initial standard, I note that Respondent's ''Justice for Janitors'' campaign against nonunion janitors and the building owners or managers who contract with them commenced in June 1990—less than 2 years after the Board issued its prior *West Bay*, supra, decision, a case involving similar secondary picketing based on West Bay's nonunion status, and 4 years after the Board's *Stay-King*, supra, and *Pacific Telephone*, supra, decisions, both of which involved secondary picketing. As pointed out by counsel for the General Counsel, unlike the situation herein, the Board has denied broad relief in secondary picketing cases in which there has been no evidence of ''previous similar violations.'' *Atchison, Topeka & Santa Fe Railway Co.*, supra at 616 fn. 3. With regard to the second facet of the Board's test, the record establishes that Respondent's ''Justice for Janitors'' campaign continued for slightly longer than 15 months during which time Respondent engaged in confrontational, coercive, and disruptive tactics to achieve its secondary aims at no less than seven commercial office buildings in downtown San Francisco.[118] Moreover, Respondent has ignored the building owners' and managers' efforts to limit, or eliminate, the effect of its picketing and other conduct. In my view, such indicates not only a blatant and egregious disregard for the secondary boycott provisions of the Act but also, as Respondent's goal, clearly, is to attack nonunion janitorial contractors anywhere in San Francisco, the distinct possibility that Respondent will continue its campaign and involve other neutral building owners or managers unless an order of the Board contains some future injunctive relief. *Thrust IV*, supra at 629. Accordingly, as I believe that, without proper restraint, Respondent is likely to continue to engage in similar secondary activity as herein involved, a broad remedial order is necessary.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[119]

ORDER

The Respondent, Service Employees Union, Local 87, Service Employees International Union, AFL–CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Picketing or any similar or related conduct or in any other manner inducing or encouraging any individual employed by JMA Properties Ltd., the tenants of 55 Hawthorne and 631 Howard, Koret of California, Inc., Northwest Asset Management Co., Kvaerner Hydro Power, Inc., the tenants of 49 Stevenson, Brighton Pacific Asset Management Co., the FDIC, the tenants of 25 Ecker, or any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of his or her employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services where objects thereof are to force or require JMA Properties Ltd., Koret of California, Inc., Northwest Asset Management Co., Brighton Pacific Asset Management Co., or any other person to cease doing business with West Bay Building Maintenance, Trinity Building Maintenance, GMG Janitorial Maintenance, any other person; or to force or require any person to pressure or to cease doing business with JMA Properties, Ltd., Koret of California, Inc., Northwest Asset Management Co., Brighton Pacific Asset Management Co., or an other person in order to force or require said latter persons or any other persons, in turn, to cease doing business with West Bay Building Maintenance, Trinity Building Maintenance, GMG Janitorial Maintenance, or any other person.

(b) Picketing or any similar or related conduct, threatening to picket, or by any other means threaten, coerce, or restrain Northwest Asset Management Co., the tenants at 49 Stevenson, Gallelli Real Estate, the tenants at 1 Ecker, JMA Properties, Ltd., the tenants at 55 Hawthorne; Koret of California, Inc., 394 Associates, Brighton Pacific Asset Management Co., the tenants at 25 Ecker, or any other person engaged in commerce or in an industry affecting commerce where objects thereof are to force or require Northwest Asset Management Co., Gallelli Real Estate, JMA Properties Ltd., Koret of California, Inc., 394 Associates, Brighton Pacific Asset Management Co., or any other person to cease doing business with Trinity Building Maintenance, West Bay Building Maintenance, GMG Janitorial Maintenance, or any other person or to force or require any person to person to pressure or cease doing business with Northwest Asset Management Co., Gallelli Real Estate, JMA Properties Ltd., Koret of California, Inc., 394 Associates, Brighton Pacific Asset Management Co., or any other person in order to force or require said latter persons or any other persons to cease doing business with Trinity Building Maintenance, West Bay Building

[118] I have not included Respondent's acts and conduct at 230 California and 260 California at which Respondent was saved from acting unlawfully by the relationship between IMA and Complete, a matter about which Respondent was ignorant until the trial herein.

[119] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

Maintenance, GMG Janitorial Maintenance, or any other person.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its business office and all meeting halls located in San Francisco, California, copies of the attached notice marked ''Appendix.''[120] Copies of said notice, on forms provided by the Regional Director for Region 20, after being signed by Respondent's authorized representative, shall be posted by it immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaints in Cases 20–CC–3162 and 20–CC–3164 be dismissed insofar as they allege violations of Section 8(b)4)(i)(B) of the Act and that the complaint in Case 20–CC–3189 be, and the same hereby is, dismissed in its entirety.

[120] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''